

# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 522**



Publication Date: June 30, 1999  
Effective Date: July 1, 1999



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## EMERGENCY RULES NOW IN EFFECT

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

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### EMERGENCY RULES NOW IN EFFECT (2)

#### Agriculture, Trade & Consumer Protection

1. Rules were adopted amending s. ATPC 60.19 (3) and (4), relating to drug residues in raw milk.

#### Finding of Emergency

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATPC 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

<b>Publication Date:</b>	<b>April 30, 1999</b>
<b>Effective Date:</b>	<b>April 30, 1999</b>
<b>Expiration Date:</b>	<b>September 27, 1999</b>
<b>Hearing Date:</b>	<b>June 18, 1999</b>

2. Rules adopted revising s. ATPC 10.45, relating to security of dairy plant payments to milk producers.

#### Finding of Emergency

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATPC 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATPC 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATPC 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATPC 100, Subch. V.

(3) Under s. ATPC 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the *preceding* license year. Milk prices hit all time record highs in 1998, dramatically increasing monthly dairy plant payrolls. Security requirements for the 1999

license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

**Publication Date:** April 20, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce

#### (Flammable & Combustible Liquids, Ch. Comm10)

Rules adopted revising **ch. Comm 10**, relating to regulation of flammable and combustible liquids.

### Finding of Emergency

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety, welfare and the environment.

The facts constituting the emergency are as follows. Under ss. 101.09, 101.142 and 101.144, Stats., the Department protects public health, safety, welfare and the environment by promulgating rules for and administering the regulation of petroleum product storage tank systems and the storage and handling of flammable and combustible liquids. The purpose of the regulatory effort is to guarantee that storage tank systems and their contents are managed in a manner that is protective of life safety and the environment.

On December 22, 1998, a ten-year upgrade deadline comes to an end, and all tank systems falling under the United States Environmental Protection Agency's rules are required to have been upgraded to comply with new and environmentally protective construction standards. After the final compliance date, the Department and its contracted agents will conduct inspections to guarantee that tank systems which are not in compliance have been shut down in accordance with state and federal rules. In those instances where owners or operators have not complied with the upgrade or shutdown requirements, immediate action must be taken to either prevent the tank systems from continuing to be used or prevent the delivery of additional petroleum product to the systems.

The shut down of noncomplying tank systems is a core environmental and financial issue. The tank systems that are not in compliance pose a continuing high-risk threat to the environment, and delay in action will continue an unnecessary environmental hazard. Additionally, new releases from these non-upgraded tank systems will add to the financial burden of the PECFA program, which is significantly over-subscribed. The rule included with this order is in response to environmental issues associated with non-upgraded tank systems.

**Publication Date:** December 11, 1998  
**Effective Date:** December 11, 1998  
**Expiration Date:** May 10, 1999  
**Hearing Date:** March 3, 1999  
**Extension Through:** July 8, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Commerce & Natural Resources

#### (Petroleum Environmental Cleanup Fund Interagency Responsibilities, Ch. Comm 46)

Rules adopted revising **ch. Comm 46**, relating to the Petroleum Environmental Cleanup Fund Interagency Responsibilities.

### Finding of Emergency

The Wisconsin Natural Resources Board finds that an emergency exists and that a rule is necessary for the immediate preservation of

the public peace, health, safety or welfare. A statement of the facts contributing to the emergency is: The Department of Commerce has adopted administrative rules under ss. 101.143 and 101.144, Stats., to implement the Petroleum Environmental Cleanup Fund Act (PECFA). The purpose of PECFA is to reimburse responsible persons for the eligible costs incurred to investigate and remediate petroleum product discharges from a petroleum product storage system or home oil tank system. The emergency rule is being proposed in response to resolutions adopted by the Joint Committee for Review of Administrative Rules (JCRAR) which directed the Department of Commerce and the Department of Natural Resources to promulgate a joint emergency rule, incorporating parts of a Memorandum of Understanding between the two agencies that relates to the classification of contaminated sites. JCRAR has made it clear that the committee was prepared to suspend the Department of Commerce's PECFA rules if the agencies failed to adopt the emergency rule that JCRAR was directing them to adopt.

**Publication Dates:** June 8, 1999

**Effective Date:** June 8, 1999

**Expiration Date:** November 5, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Commerce*

**(Financial Resources for Communities,  
Chs. Comm 105 to 128)**

1. Rules adopted revising **ch. Comm 113**, relating to the annual allocation of volume cap on tax-exempt private activity bonds.

### Finding of Emergency & Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Several areas in the State of Wisconsin have recently experienced severe economic distress due to large plant closings which have put hundreds of Wisconsin residents out of work. As a result of two large paper mills being shut down a year ago, 1997 Wisconsin Act 237 created s. 560.147, Stats., authorizing the Rapid Response Fund within the Wisconsin Development Fund. The fund is part of the Rapid Response Initiative, which assists areas affected by these and future closings. Commerce is now proposing as part of this initiative a Rapid Response Set Aside within the volume cap allocation process which will enable businesses in these distressed areas to obtain the financing they need to make the necessary capital investments to create and retain jobs. Several projects are pending in that need this change in order to move forward with their plans. Allocation of volume cap is in highest demand in the spring and summer due to the construction cycle. The Rapid Response set-aside must be in place as soon as possible in order for projects to receive allocation and begin construction as soon as possible. Jobs cannot be created or retained until projects go forward.

**Publication Date:** February 17, 1999

**Effective Date:** February 17, 1999

**Expiration Date:** July 17, 1999

**Hearing Date:** April 12, 1999

2. Rules adopted creating **ch. Comm 112**, relating to the Wisconsin Development Zone Program.

### Finding of Emergency

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

Pursuant to ss. 560.70 to 560.797, Stats., the Department of Commerce is responsible for administering Wisconsin Development Zone Program. These rules are being adopted to incorporate in the administrative code the recent amendments contained in 1997 Wis. Act 27 that entirely changed the eligibility and the criteria for certified development zone businesses and the process for the verification and the claiming of tax credits. Section 560.785, Stats., directs the Department of Commerce to develop rules and exceptions to those rules concerning the eligibility for tax benefits. After a review and evaluation of all the certified businesses and their projects a number of exceptions have been identified in order to meet the needs of different areas of the state and to fulfill our commitments to businesses that were made prior to this legislation. In order to process claims for tax years beginning on or after January, 1, 1998, these rules must be made available immediately.

**Publication Date:** February 25, 1999

**Effective Date:** February 25, 1999

**Expiration Date:** July 25, 1999

**Hearing Date:** May 12, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Corrections*

Rules adopted creating **ch. DOC 330**, relating to pharmacological treatment of serious child sex offenders.

### Finding of Emergency

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is: A recent session law, 1997 Wis. Act 284, created s. 304.06(1q) Stats., which will become effective January 1, 1999, and authorizes the department to require pharmacological treatment (chemical castration) for certain child sex offenders as a condition of probation or parole to accomplish the objectives of protection of the public or treatment of serious child sex offenders. Pharmacological intervention cannot begin without administrative rules. Development and promulgation of permanent rules will take approximately six months to complete. Emergency rules are necessary to implement the program for the safety of the public while permanent rules are being developed.

**Publication Date:** January 1, 1999

**Effective Date:** January 1, 1999

**Expiration Date:** May 31, 1999

**Hearing Dates:** March 1, 2 and 3, 1999

**Extension Through:** July 29, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Emergency Response Board*

Rules adopted revising **s. ERB 1.04**, relating to reporting requirements for gasoline and diesel fuel present at 10,000 pounds or more at retail gas stations.

### Finding of Emergency and Rule Analysis

The Wisconsin Division of Emergency Management finds that an emergency exists and that adoption of this rule is necessary for the immediate preservation of public health, safety, and welfare. The facts constituting the emergency are as follows:

The U.S. Environmental Protection Agency has stated in writing, its intent to implement a rule change effective March 1, 1999. The rule change will increase the 42 USC 11021 and 11022 reporting

threshold for gasoline to 75,000 gallons and for diesel fuel to 100,000 gallons, when stored in below ground tanks at retail gas stations. This change will have the effect of exempting most gasoline stations from EPCRA reporting requirements. It will also mean that gasoline and diesel fuel that is present in 10,000 pounds or more will not be uniformly reported under EPCRA. If implemented, this rule change will occur during a reporting period and will take effect on the deadline for submission of 1999 reporting information, which applies to chemicals that were present in 1998. This will create a situation where facilities reporting prior to the rule change would be reporting under one requirement and those reporting after the March 1, 1999 deadline would be reporting under a different requirement. It is not clear which requirement would affect those facilities that submit documentation prior to the intended rule change, that is, by the reporting deadline, and whether these facilities would have to amend their submissions to be in compliance with the law.

The most commonly spilled substances in Wisconsin are petroleum products, gasoline and diesel fuel. This information is important to fire departments as well as Local Emergency Planning Committees as an emergency response planning tool. The Tier Two chemical information is provided to the local fire department with jurisdiction over the facility and to the appropriate Local Emergency Planning Committee. This is the only comprehensive list of hazardous materials that is available to fire departments and Local Emergency Planning Committees.

Further, in Wisconsin, individual preprinted forms are printed in mid December and mailed out by the first week of January to assist facilities in meeting reporting requirements. This is well before the time when U.S. EPA has stated that they intend to implement a rule change. Because EPA intends to implement the change on the March 1, 1999 reporting deadline, it is not possible to mail forms out at that time and have facilities make the necessary submissions by the March 1, 1999 deadline. Wisconsin facilities have come to expect that inventory reporting materials will be mailed out in a time frame that will allow adequate time for the facility to meet the March 1, 1999 reporting deadline. Facilities that fail to submit the necessary reporting materials by the March 1, 1999 reporting deadline would be in non-compliance with federal and state EPCRA reporting requirements.

Individual states do not have the authority to implement requirements under EPCRA which are less stringent than the federal requirements. This emergency rule would maintain the existing reporting requirements that have been in place since the inception of the program in 1986. Specifically, this rule states that the reporting thresholds for gasoline and diesel fuel would be maintained at 10,000 pounds for retail gas stations. This emergency rule will allow Wisconsin Emergency Management the ability to distribute reporting materials in a timely manner and will permit the facilities to submit the necessary paperwork prior to the March 1, 1999 deadline. By allowing facilities sufficient time prior to the March 1, 1999 deadline, they will have the opportunity to make the necessary submissions under EPCRA and to remain in compliance with federal and state law. This will also insure that all gasoline and diesel fuel stored in amounts of 10,000 pounds or more in the state is reported under EPCRA. This in turn will insure that all fire departments and Local Emergency Planning Committees will continue to have access to a comprehensive listing of hazardous materials under the Emergency Planning and Community Right-to-Know Act.

**Publication Date:** January 20, 1999  
**Effective Date:** January 20, 1999  
**Expiration Date:** June 19, 1999  
**Hearing Dates:** March 16 & 19, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Employment Relations Commission*

Rules adopted revising **ch. ERC 33, Appendix C**, relating to the calculation of a minimum qualified economic offer in collective bargaining with professional school district employees.

### Finding of Emergency

We find that it is necessary to promulgate the amendment to ch. ERC 33, Appendix C as an emergency rule to preserve the public peace, health, safety and welfare. Without the amendment, the timely and peaceful resolution of collective bargaining disputes in Wisconsin will be endangered.

**Publication Date:** June 12, 1999  
**Effective Date:** June 12, 1999  
**Expiration Date:** November 9, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Financial Institutions*

#### **(Division of Securities)**

Rules adopted creating **s. DFI-Sec 2.01(1)(c)6 and (d)6.**, relating to designating alternative accounting guidelines for the preparation of financial statements for certain governmental issuers of securities.

### Finding of Emergency

The Division of Securities of the Department of Financial Institutions for the State of Wisconsin finds that an emergency exists and that rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency follows.

These emergency rules are necessitated by a new accounting guideline relating to disclosures about Year 2000\* issues applicable to the preparation of financial statements for governmental issuers of securities as required by Governmental Accounting Standards Board Technical Bulletin 98-1, *Disclosures about Year 2000 Issues* ("GASB TB 98-1", or "Guideline"). The existence of this issue and the need for emergency rule treatment to assist governmental issuers was brought to the attention of the Division by representatives of Wisconsin public accounting groups and Wisconsin bond attorneys who recently learned about a Report by the American Institute of Certified Public Accountants regarding GASB TB 98-1.

As a result of that Report (and as particularized below) many Wisconsin governmental issuers would have the audit opinions for their financial statements for years ending after October, 1998, qualified with respect to disclosures about Year 2000 issues. Thus beginning in approximately March and April of 1999 and continuing through the accounting period ending 12/31/99, that new accounting Guideline will adversely impact the ability of Wisconsin and other state and local governmental securities issuers to continue to use on an "automatic"/self-executing basis, the existing securities registration exemption in s. 551.22(1)(a) of the Wisconsin Securities Law to offer and sell their debt securities to public investors in Wisconsin.

Over the years and to date, Wisconsin and other state and local governmental securities issuers having "full-GAAP" financial statements (e.g. prepared in accordance with generally accepted

accounting principles) have been able to sell their debt securities to Wisconsin public investors in reliance on automatic use of the registration exemption in s. 551.22(1)(a), Wis. Stats., without the need for any exemption or other filing with the Division.

GASB TB 98-1 requires footnote disclosure of Year 2000 information regarding a governmental issuer's preparedness in terms of making its systems and equipment Year 2000 compliant. GASB TB 98-1 applies to financial statements dated October 31, 1998, and terminates for financial statements issued for purposes of the accounting period ending December 31, 1999, unless systems and equipment are not Year 2000 compliant as of the balance sheet date. In response to GASB TB 98-1, members of the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) issued a Report under the title "AICPA Illustrative Reporting Guidance on Year 2000 Disclosures Made Under GASB TB 98-1, Issued October 22, 1998." That Report raised the concern that in light of the unprecedented nature of the Year 2000 issue, the required disclosures will be neither ascertainable by management nor verifiable by auditors. As a result, the AICPA strongly recommended that auditors issue qualified opinions (scope limitations) with respect to such Year 2000 issue disclosures.

Consequently, all Wisconsin and other governmental securities issuers whose financial statements would contain such qualified opinions, would not meet (in the absence of the emergency rules) the "full-GAAP" financial statement requirement for automatic use of the registration exemption in 551.22(1)(a), Wis. Stats. Thus, such issuers would either have to go through a regulatory filing and review procedure with the Division prior to each offering, or would have to restrict the initial offering to securities law provisions that would preclude underwriters from reoffering those securities to investors in the primary and secondary markets.

In the absence of the emergency rules, governmental securities issuers would be adversely affected by the costs of making securities filings with their attendant delays. Also, even though Year 2000 issues equivalently affect private corporate issuers of securities, because there is no counterpart to GASB TB 98-1 within the standards promulgated by the Financial Accounting Standards Board applicable to private corporate securities issuers, the additional costs and filing delays would be singularly borne by governmental securities issuers (if the emergency rules were not adopted).

Finally, having a filing requirement under the Wisconsin Securities Law be triggered for Wisconsin and other state and local governmental securities offerings solely because of an auditor's qualification in an audit report on the Year 2000 issue, would result in added regulatory filing and review processes and procedures under the Wisconsin Securities Law that would not provide any "value added" investor protection benefits.

Therefore, in similar fashion to emergency rule-making action taken by the Division in 1994 and 1996 regarding specific accounting issues which occurred at those times, and for the purpose of alleviating the disruption that would occur in the borrowing/bonding plans of Wisconsin and other state and local governmental issuers that regularly claim exemption status under sec. 551.22(1)(a), Wis. Stats., for the offer and sale of their debt securities in Wisconsin, the Division, in consultation with representatives of Wisconsin accounting groups and Wisconsin bond attorneys, is adopting these emergency rules designating an alternative-to-full-GAAP financial statement requirement (when the governmental issuer's financial statements are full-GAAP) where the auditor's opinion is qualified in accordance with GASB TB 98-1 with respect to disclosures concerning Year 2000 issues. As a result of such emergency rules, those Wisconsin and other state and local governmental securities issuers affected by GASB TB 98-1 will be able to continue to rely on the "automatic" registration exemption under 551.22(1)(a), Wis. Stats., for their securities offerings.

[Because this issue which has been triggered by GASB TB 98-1 has a limited "shelf life" such that no permanent rules relating to it will be needed after December 31, 2000, when action is taken by the Division to promulgate identical permanent rules to become

effective upon expiration of the emergency rules, the permanent rules will provide for a December 31, 2000 "sunset" date, after which the permanent rules on the issue will no longer be effective.]

\*The Year 2000 problem is the result of shortcomings in electronic data-processing systems and equipment that may adversely affect operations in the year 2000 and beyond. The problem stems from the use within electronic systems and equipment of two-digit storage for calendar years. Affected and uncorrected systems and equipment may be unable to distinguish the year 2000 from the year 1900; as a result, such systems may process inaccurately or stop processing altogether.

**Publication Date:** February 25, 1999  
**Effective Date:** March 1, 1999  
**Expiration Date:** July 29, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Professional Geologists, Hydrologists and Soil Scientists*

Rules adopted creating **chs. GHSS 1 to 5**, relating to the registration and regulation of professional geologists, hydrologists and soil scientists.

### Exemption From Finding of Emergency

The Examining Board of Geologists, Hydrologists and Soil Scientists finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, safety or welfare. A statement of the facts constituting the emergency is:

Section 64 of 1997 Wis. Act 300 states that the board is not required to make a finding of emergency. However, the board offers the following information relating to the promulgation of these rules as emergency rules. The new regulation of professional geologists, hydrologists and soil scientists was created in 1997 Wis. Act 300. The Act was published on June 30, 1998; however the Act created an effective date for the new regulation as being the first day of the 6th month beginning after the effective date of this subsection.

**Publication Date:** May 15, 1999  
**Effective Date:** May 15, 1999  
**Expiration Date:** October 12, 1999  
**Hearing Date:** June 23, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Health and Family Services*

(Health, Chs. HSS/HFS 110—)

1. Rules adopted amending **ss. HFS 119.07 (6) (b) and 119.15**, relating to the Health Insurance Risk-Sharing Plan.

### Exemption From Finding of Emergency

Section 149.143 (4), Stats., as affected by 1997 Wisconsin Act 27, permits the Department to promulgate rules required under s. 149.143(2) and (3), Stats., as affected by Act 27, by using emergency rulemaking procedures except that the Department is specifically exempted from the requirement under s. 227.24(1) and (3), Stats., that it make a finding of emergency. These are the rules. Department staff consulted with the HIRSP Board of Governors on December 11, 1998 on the proposed rules, as required by s. 149.20, Stats.

## Analysis Prepared by the Department of Health and Family Services

The State of Wisconsin in 1981 established a Health Insurance Risk-Sharing Plan (HIRSP) for the purpose of making health insurance coverage available to medically uninsured residents of the state. One type of coverage provided by HIRSP is supplemental coverage for persons eligible for Medicare. This coverage is called Plan 2. Medicare (Plan 2) has a \$500 deductible. Approximately 17% of the 7,123 HIRSP policies in effect on October 31, 1998 were of the Plan 2 type.

The Department through this rulemaking order is amending ch. HFS 119 in order to update HIRSP Plan 2 premium rates by just over 10% in accordance with the authority and requirements set out in s. 149.143 (3) (a), Stats. The Department is required to set premium rates by rule and the rates must be calculated in accordance with generally accepted actuarial principles.

The Department through this order is also adjusting the total HIRSP insurer assessments and provider payment rates in accordance with the authority and requirements set out in s. 149.143 (2)(a)3. and 4., Stats., as affected by Act 27.

**Publication Date:** December 31, 1998

**Effective Date:** January 1, 1999

**Expiration Date:** May 31, 1999

**Hearing Date:** March 11, 1999

**Extension Through:** July 29, 1999

2. Rules adopted creating **ch. HFS 114**, relating to neonatal intensive care unit training grants.

## Exemption From Finding of Emergency

The Legislature in s. 9122 (3tz) of 1997 Wisconsin Act 237 directed the Department to promulgate rules required under s. 9122 (3ty) of 1997 Wisconsin Act 237 by using emergency rulemaking procedures but exempted the Department from the requirement under s. 227.24 (1) and (3), Stats., to make a finding of emergency. These are the rules.

## Analysis Prepared by the Department of Health and Family Services

Section 9122 (3ty) (b) of 1997 Wisconsin Act 237 directs the Department to distribute up to \$170,000 each year in state fiscal years 1999 and 2000 to provide up to 10 grants to public or private hospitals to pay for specialized training and on-site consultation and support of medical personnel of neonatal intensive care units in the principles and practice of developmentally supportive and family-centered care for high-risk infants and their families. Section 9122 (3ty) (c) of Act 237 directs the Department to promulgate rules that establish criteria and procedures for awarding grants. The rules are to define "specialized training and on-site consultation and support," which must include a minimum of 40 hours of formal training and 160 hours of practice work.

This order creates ch. HFS 114 relating to distribution of grants to applicant public or private hospitals' neonatal intensive care units to pay for training of staff in the principles and practice of developmentally supportive and family-centered care. The rules include a process by which hospitals may apply for training funds, requirements relating to the training and requirements relating to training center record-keeping and reporting.

**Publication Date:** January 21, 1999

**Effective Date:** January 21, 1999

**Expiration Date:** June 20, 1999

**Hearing Date:** April 7, 1999

**Extension Through:** July 31, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### Insurance

1. Rules adopted amending **s. Ins 3.39 (34)(b)1. and 2., 3.b., and 6.,** relating to guarantee issue eligibility for Medicare Supplement insurance.

### Finding of Emergency

The Commissioner of Insurance finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. Facts constituting the emergency are as follows:

These changes clarify the persons eligible who have the right to have policies guaranteed issued. The changes track the recent revisions in the NAIC (National Association of Insurance commissioners) model Medicare Supplement regulations. In order to provide more certainty and provide guarantee issue to the appropriate persons in Wisconsin, it is necessary that the change be put into effect as soon as possible. In addition, other permanent changes to the Medicare Supplement requirements are effective February 1, 1999 and this change effective the same date will allow insurers to modify their policies one time rather than two.

**Publication Date:** January 28, 1999

**Effective Date:** February 1, 1999

**Expiration Date:** July 1, 1999

**Hearing Date:** March 3, 1999

2. Rules adopted amending **ss. Ind 17.01 (3) (intro.) and 17.28 (6a)** repealing and recreating **s. Ins 17.28 (6),** relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1999.

### Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule No. 99-70, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1999.

The commissioner expects that the permanent rule will be filled with the secretary of state in time to take effect September 1, 1999. Because the fund fee provisions of this rule first apply on July 1, 1999, it is necessary to promulgate the fee portion of the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 17, 1999.

**Publication Date:** June 4, 1999

**Effective Date:** July 1, 1999

**Expiration Date:** November 28, 1999

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

(Fish, Game, etc., Chs. NR 1--)

- Rules adopted creating **s. NR 20.33 (5),** relating to special closure of the sturgeon spearing season if harvest reaches or exceeds 80% of the total allowable harvest.

## Finding of Emergency

The department of natural resources finds that an emergency exists and rule is necessary for the immediate preservation of the public health, safety or welfare. The facts constituting this emergency are:

Winter water clarity in Lake Winnebago has been improving steadily over the last decade at a rate faster than anticipated, which has substantially increased the potential for overharvest of sturgeon by spearers. Even with the new harvest restrictions passed in 1996, exceptionally clear water during the 1998 spearing season resulted in a total harvest of 2,051 fish, which was in excess of our total allowable harvest goals. An emergency order is needed to prevent overharvest of sturgeon during the 1999 season while permanent rules are being developed for implementation in the year 2000.

**Publication Date:** February 5, 1999  
**Effective Date:** February 5, 1999  
**Expiration Date:** July 5, 1999  
**Hearing Date:** March 16, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

**(Environmental Protection–Water Regulation, Chs. NR 300–)**

Rules adopted creating **ch. NR 303**, relating to department determinations of navigability for farm drainage ditches.

### Exemption From Finding of Emergency

The Department was directed by the JCRAR under s. 227.26 (2) (b), Stats., to promulgate emergency rules regarding navigability

### Analysis prepared by the Department of Natural Resources

Statutory authority: s. 227.26 (2)(b)

Statute interpreted: s. 30.10 (4)(c)

This order codifies present department program guidance for staff making navigability determinations for farm drainage ditches, identifying various methods and information to be relied on when making such determinations.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999  
**Hearing Dates:** June 16 and 17, 1999

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Public Service Commission*

1. Rules adopted revising **ch. PSC 4**, relating to small generating plants.

### Finding of Emergency

In order to preserve the health, safety, and welfare of Wisconsin ratepayers by ensuring a reliable energy supply in 2000 and beyond, the Commission's review process of proposed new generating plants that are less than 100 MW in size must be amended. A revision is needed so the review process for such projects can be completed in time to allow construction of necessary projects, if approved, by

June 1, 2000. Permanent rules cannot be adopted in time to affect the Commission's review period. An emergency rule is necessary to change the Commission's review process immediately.

**Publication Date:** January 19, 1999  
**Effective Date:** January 19, 1999  
**Expiration Date:** June 18, 1999  
**Hearing Date:** February 22, 1999  
**Extension Through:** August 16, 1999

2. Rules adopted creating **ch. PSC 186**, relating to standards for water and sewer service in mobile home parks.

### Exemption From Finding of Emergency

These rules are now being adopted as emergency rules effective May 1, 1999, as directed by section 22(2) of 1997 Wis. Act 229.

**Publication Date:** May 1, 1999  
**Effective Date:** May 1, 1999  
**Expiration Date:** September 28, 1999

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## EMERGENCY RULES NOW IN EFFECT

### *Revenue*

A rule was adopted creating **s. Tax 11.20**, relating to the sales and use tax treatment of machinery and equipment used in waste reduction and recycling activities.

### Exemption From Finding of Emergency

On February 25, 1999, the Joint Committee for Review of Administrative Rules, pursuant to s. 227.26, (2) (b), Stats., directed the Department of Revenue to use the emergency rule making process to promulgate as an emergency rule, within 30 days, its policies interpreting s. 77.54 (26m), Stats.

### Analysis by the Department of Revenue

Statutory authority: ss. 227.11 (2) (a) & 227.26 (2) (b)

Statute interpreted: s. 77.54 (26m)

Section Tax 11.20 is created to address the sales and use tax exemptions for waste reduction and recycling activities.

**Publication Date:** March 27, 1999  
**Effective Date:** March 27, 1999  
**Expiration Date:** August 24, 1999

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## EMERGENCY RULES NOW IN EFFECT(2)

### *Workforce Development*

**(Economic Support, Chs. DWD 11–59)**

1. Rules adopted renumbering **ss. HFS 55.55 to 55.62** and revising **ch. DWD 55**, relating to background checks for persons involved with certified day care.

### Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Beginning on October 1, 1998, recently enacted provision in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the



programs operated by caregivers. Although most of these provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

**Publication Date:** October 1, 1998  
**Effective Date:** October 1, 1998  
**Expiration Date:** February 28, 1999  
**Extension Through:** June 27, 1999

2. Rules adopted renumbering **ch. HFS 55** and revising **DWD 55**, relating to criminal background checks in daycare.

### Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate

preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

This represents the most recent amended version of this emergency rule which was first adopted on October 1, 1998. Beginning on October 1, 1998, recently enacted provisions in ch. 48, Stats., require the completion of background reviews on caregivers and others who come into contact with clients in the programs operated by caregivers. Although most of those provisions are administered by the Department of Health and Family Services, they also include day care programs certified by the Department of Workforce Development. DWD is adopting this emergency rule so that county and tribal social services agencies and human services agencies will be able to implement the new background review requirements in relation to certified day care programs as they become effective.

**Publication Date:** March 26, 1999  
**Effective Date:** March 26, 1999  
**Expiration Date:** August 23, 1999

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### **Commerce**

#### **Subject:**

Ch. Comm 8 – Relating to mines, pits and quarries.

#### **Description of policy issues:**

##### *Description of the objective of the rule:*

The objective of the rule is to update the provisions of the Department's administrative rules relating to mines, pits and quarries. An advisory council will be formed to review the rules and identify potential rule revisions.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The current rules of ch. Comm 8 are based on federal regulations issued by the Mine Safety and Health Administration in the Department of Labor. The rules cover openings or excavations in the earth for the purpose of extracting minerals or other materials and the equipment related to processing or manufacturing of ores, aggregates, cements, lime, clay and silica sands in a mine, pit or quarry. Because it has been several years since ch. Comm 8 was revised, it is anticipated that the review will result in change proposals to bring the rules into conformance with current national standards. Avoiding this update will result in continuing to have rules that are not consistent with currently recognized national standards and practices.

#### **Statutory authority:**

Section 101.15 (2) (e), Stats.

#### **Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

The Department estimates that it will take approximately 300 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

### **Commerce**

#### **Subject:**

Ch. Comm 14 – Relating to fireworks.

#### **Description of policy issues:**

##### *Description of the objective of the rule:*

The overall objective of the proposed rule is to protect the life, health, safety and welfare of the public and firefighters by creating administrative rules for the proper storage, handling and use of fireworks in or upon the premises of public buildings, places of employment and public thoroughfares.

In developing the proposed fireworks rules, the Department will evaluate the current requirements of s. 167.10, Stats., regarding fireworks activities other than the manufacturing of fireworks. The Department will also identify and evaluate applicable federal regulations for fireworks.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Currently, there are no state administrative rules regarding the storage, handling and use of fireworks after the product has left the manufacturing site. There are federal regulations and minimal state statutes for fireworks outside of the manufacturing plant, but these have not been consolidated into any single document that may be enforced at the local level. Municipalities have been assigned the responsibility to enforce the majority of fireworks regulations. Presently, the lack of state rules leaves a void for some local units of government, as many municipalities do not have the resources to develop local regulations for fireworks.

There are currently national model fire codes and nationally recognized standards relating to fireworks which may be followed or adopted in the proposed rules. The current applicable federal regulations regarding fireworks may be identified and referenced as part of the proposed rules. The proposed rules would provide the local fire officials and law enforcement officials with the necessary tools to perform their duties as assigned by statute.

The alternative of not having the proposed state rules for fireworks is the continued misunderstanding of the current federal regulations and state statutes by retailers, users, the general public and local officials. Inadequate understanding and enforcement of fireworks regulations opens the possibility for personal injury and the loss of life and property from unwanted explosions or fires resulting from the improper storage, handling and use of fireworks. Also, the lack of state rules results in inconsistent enforcement from one municipality to the next.

#### **Statutory authority:**

SS. 101.02 (1) and (15) (h) to (j) and 101.14 (1) and (4), Stats.

#### **Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

The Department estimates that it will take approximately 400 hours to develop this rule. This time includes forming and meeting with an advisory council, then drafting the rule and processing the rule through public hearings, legislative review and adoption. The Department will assign existing staff to develop the rule. There are no other resources necessary to develop the rule.

### **Commerce**

#### **Subject:**

Ch. Comm 46 – Relating to the Petroleum Environmental Cleanup Fund (PECFA) interagency responsibilities.

#### **Description of policy issues:**

##### *Description of the objective of the rule:*

The Department of Commerce administers the Petroleum Environmental Cleanup Fund (PECFA) under sections 101.143 and 101.144, Stats., to reimburse property owners for eligible costs associated with the discharge of petroleum product from a storage system or home oil tank system and to administer remediations at medium- and low-priority petroleum cleanup sites.

At the request of the Joint Committee for Review of Administrative Rules (JCRAR), Commerce adopted an emergency rule that included provisions for incorporating risk assessment into the remediation of petroleum-contaminated properties and provisions from the Memorandum of Understanding that existed between Commerce and the Department of Natural Resources relating to the classification of sites and statements of policy that affect PECFA sites.

Under this rule-making initiative, Commerce proposes to develop rules that will continue to look at those aspects of risk assessment that could be incorporated in the rule to direct available public funds to the most critical environmental sites.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The creation of the rule is designed to maximize the use of risk-based corrective action within the provisions of the state groundwater statute. The effect of this rule-making action will be to look at ways that the rules can be modified to incorporate risk analysis, reduce expenditure of public funds on sites which are low environmental and public safety risks and balance fiscal demands on the fund.

**Statutory authority:**

SS. 101.143 and 101.144, Stats.

**Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

Development of Rules	100 hours
Public Hearings	40 hours
Summarize Public Hearing Comments	40 hours
Develop Final Rule for Submission for Legislative Review	50 hours
<u>Adoption</u>	<u>10 hours</u>
<b>Total</b>	<b>240 hours</b>

**Natural Resources**

*(Fish, Game, etc., Chs. NR 1--)*

**Subject:**

NR Code – Relating to approval of a Wisconsin Grey Wolf Management Plan.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

The Wolf Advisory Committee has been working extensively with the public since spring of 1996 to develop a plan to manage Wisconsin's growing wolf population. This plan will address:

- Wolf management as a threatened species,
- When wolves should be taken off the threatened species list,
- How to manage them as a protected species, and
- The potential that (someday) a harvest season may be necessary.

A Wisconsin plan is needed by the U.S. Fish and Wildlife Service to remove wolves from the Federal Endangered Species List.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

The plan will deal with 23 issues concerning the future of wolf management in Wisconsin. The most important ones are:

- Delisting goal
- Population control
- Population monitoring
- Budget
- Final population goal
- Depredation problems

– Management zones

– Damage payments

**Statutory authority:**

S. 29.605 (formerly s. 29.415), Stats.

**Anticipated time commitment:**

The anticipated time commitment is 123 hours.

**Natural Resources**

*(Environmental Protection--Solid Waste, Chs. NR 500--)*

*(Environmental Protection--Hazardous Waste Management, Chs. NR 600--)*

*(Environmental Protection--Investigation and Remediation, Chs. NR 700--)*

**Subject:**

NR Code – Relating to reviewing current policies, guidance and rules to identify methods of improving the process by which contaminated sites with both R&R and Waste issues are addressed.

**Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

One of the chief issues that was identified as part of the Brownfields Study efforts is the challenge of dealing with waste laws when cleaning up and redeveloping brownfields property. An internal Ad-Hoc team has been created and is made up of staff from the Bureaus of Waste Management and Remediation and Redevelopment. They will review current codes/policies/guidance and determine if streamlining of current processes can be handled through policy/guidance and/or rule changes. Once a review of current procedures is complete, recommended changes will be discussed with an external advisory group made up of the original Brownfields Study Group and other parties who have expressed interest.

This action represents a change from past policy.

*Explain the facts that necessitate the proposed change:*

Streamlining of the existing policies/guidances/rules will allow for more consistent application of the processes at brownfields redevelopment sites. This will also avoid the duplication of effort on the part of the two Bureaus.

This action represents an opportunity for pollution prevention and/or waste minimization.

**Statutory authority:**

Chs. 289, 291 and 292, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 1,688 hours.

**Public Service Commission**

**Subject:**

PSC Code – Relating to public utility access to and utilization of municipally-owned rights-of-way.

**Description of policy issues:**

The Public Service Commission of Wisconsin (Commission) proposes to promulgate administrative rules that will establish standards or guidelines for public utility access and utilization of municipally-owned rights-of-way (RoW). (Here, "public utility" includes various types of telecommunications service providers that may not be considered a public utility for all purposes under ch. 196, Stats.) The proposed rules would be newly created; the Commission has no existing rule on this topic.

*Description of objective:*

With the onset of increased competition in the telecommunications industry, and a continuing strong economic climate, municipalities have received increased requests for access to and use of municipally-owned RoW. In turn, many municipalities have or are considering revising or establishing ordinances that govern various aspects of RoW use. Utilities are being presented with a "patchwork quilt" of different and changing municipal ordinances as they attempt to install infrastructure necessary for providing utility services.

The objective of the Commission is to promulgate rules that establish statewide expectations regarding difficult RoW issues. This will assist municipalities when reviewing RoW ordinances and utilities when dealing with various municipalities.

*Description of policy issues:*

Currently, complaints about the reasonableness of RoW ordinances may be filed with the Commission and the Commission can deal with those on a case-by-case basis. The proposed rules are intended to set standards or provide a framework for RoW issues throughout the state. The rulemaking process will allow all stakeholders an opportunity to participate in the process.

Because the Commission does not now have rules, this will be the first opportunity for the Commission to systematically address issues such as:

- Reasonable fees for the use of a RoW, including the reasonableness of fees for the management of a RoW.
- The appropriateness of degradation as an element of RoW use, and how to determine degradation costs.
- Nondiscrimination in granting RoW access, or appropriate priority uses.
- Bonding, insurance and indemnification requirements.
- Restoration requirements.
- Planning requirements.
- Relocation requirements.
- Undergrounding requirements
- Mapping requirements.
- Commission complaint process.

The Commission considered other alternatives to rules, such as continuing to handle RoW complaints on a case-by-case basis, and participating in a workgroup consisting of utility and municipality representatives established to informally deal with RoW issues. However, at its Open Meeting on April 15, 1999, the Commission determined that initiating rulemaking proceedings would be the most appropriate way to bring some consistency to the variety of approaches that have been taken in all of the various elements that make up a municipality's RoW policy.

*Groups likely to be impacted:*

Groups likely to be impacted include electric and natural gas public utilities, telecommunications providers with physical infrastructure, such as local exchange telecommunications utilities and long distance carriers, private water utilities and municipal utilities. The proposed rules also may impact contractors who carry out construction work for utilities as well.

The proposed rules will also impact cities, villages and towns. Entities that may be potentially impacted, whether indirectly or otherwise, include cable television operators, counties, and the Wisconsin Department of Transportation.

**Statutory authority:**

SS. 196.02 (3), 196.58 (4), and 227.11 (2), Stats.

**Estimate of time and resources needed to revise the rule:**

The Commission estimates that approximately 500 hours of employee time will be required to develop the proposed rules.

*Contact information:*

For more information, please contact Scot Cullen, (608) 266-1567.

**Public Service Commission****Subject:**

Ch. PSC 165 – Relating to consumer protection for telephone customers.

**Description of policy issues:***Objective of the rules:*

Chapter PSC 165 contains a number of consumer protection regulations for customers of telecommunications utilities. These include regulations in areas such as applications for service, customer billing, information available to customers, deposits, medical and other emergencies, deferred payment agreements, late payment charges, toll charges, service restrictions, disconnection of service, customer complaints, dispute procedures, held applications, telephone directories, and installation and repairs.

In 1994 the legislature passed 1993 Wis. Act 496, which significantly changed the area of telephone utility regulation. The Act introduced much more competition and customer choice into the telecommunications field. As a result, new problems and areas of concern have arisen in the area of telecommunications regulation, which have prompted the Commission to reexamine its current administrative rules to see which are outmoded and should be removed and which areas require new rule-making. This new rulemaking will not include revisions to portions of ch. PSC 165 that concern technical service standards such as line fills, transmission requirements, and interruptions of service. These areas are being considered in a separate Commission rule-making.

*Existing policies relevant to the proposed rules:*

The Commission's present policies with respect to the telecommunications areas listed in the section above are currently contained in ch. PSC 165. Because much of the current rule predates major changes in the telecommunications industry, these policies do not specifically address consumer protection issues such as "slamming" and "cramming," or the creation of consumer assistance programs.

*New policies proposed:*

Unknown at this time. Of course, any new or updated rules concerning these areas will use the present rules as a basis for beginning. However, the specific new policies to be developed will have to await consultation with telecommunications utilities, customers, and consumer groups.

Two known areas of focus will be: (1) the establishment of guidelines for telecommunications customer assistance programs, and (2) regulations concerning "slamming" and "cramming" by telecommunications providers. The customer assistance program guidelines are expected to utilize many of the strategies implemented through the Ameritech TelCAP pilot program in aiding customers with multifaceted problems to maintain service.

*Analysis of alternatives:*

No rules have been drafted at this point, but when preliminary rules are drafted, the Commission will solicit comments and alternatives from telecommunications utilities, customers, and consumer groups.

**Statutory authority:**

As stated in s. PSC 165.01, the rules in that chapter are authorized by ss. 196.02, 196.06, 196.10, 196.12, 196.16, 196.17, and 196.19, Stats. Any proposed revisions of the chapter will be based on that same statutory authority and on s. 227.11 (2), Stats.

**Time estimates for rule development:**

The Commission estimates that 10 months will be taken up in meeting with various groups for advice and consultation in drafting the rules prior to issuance of the notice of rule-making hearing, with the formal rule-making process lasting another 6-8 months. This process of input and review followed by the rule-making proceeding will take an estimated minimum of 400 staff hours.

*Other resources necessary to develop the rules:*

No additional staff or other agency resources are anticipated for this rule-making.

**Revenue****Subject:**

SS. Tax 11.34, 11.35, 11.39, 11.535 and 11.79 – Relating to occasional sales of business assets, occasional sales by nonprofit organizations, manufacturing, operators of swap meets or similar events and leases of highway vehicles and equipment.

**Description of policy issues:***Objective of the proposed rule:*

The objectives of the proposed rule are to:

- Reflect changes in Department policy to:
  - a. No longer issue paper copies of seller's permits which may be "delivered to the department for cancellation," and replace those provisions with provisions to request inactivation of a seller's permit.
  - b. No longer issue temporary seller's permits.
  - c. Require operators of a temporary event to furnish vendor information 30 days before an event rather than 10 days after the event, to allow the Department time to inform vendors of their registration and collection responsibilities so the vendors will know they have to collect tax from their customers.
- Include certain local exposition districts and joint local water authorities as "similar organizations" for purposes of the occasional sales exemption for nonprofit organizations.
- Clarify a standard that a nonprofit organization must meet for an admission event to qualify as an exempt occasional sale.
- Clarify the Department's position that a nonprofit organization may purchase tangible personal property and taxable services for resale even if its sales of those items qualify as exempt occasional sales, and that its purchases of those items are also exempt if it uses the items and holds a certificate of exempt status.
- Remove "butcher shops" from the list of nonmanufacturers, because some butcher shops' processes may qualify as manufacturing.
- Remove language relating to a lease or rental agreement being for a long term, because there is no basis in law for distinguishing between long-term and short-term agreements when determining the amount subject to tax.
- Conform language, punctuation, style and format to Legislative Council Rules Clearinghouse standards.

*Policy analysis:*

Existing policies are as set forth in the rules. New policies being proposed include the discontinuance of the issuance of temporary seller's permits or paper copies of seller's permits, and the Department's intention to require temporary event vendors to furnish information 30 days before an event rather than 10 days after the event.

If the rules are not changed, the Department will be unable to implement new policies as discussed above. The rules will be incomplete in that they will not list local exposition districts or joint local water authorities as "similar organizations." They will be incorrect by listing butcher shops as manufacturers and by referring to long-term lease or rental agreements. They will remain unclear relating to certain admission event standards and exempt purchases by nonprofit organizations. Last, they will not reflect proper Clearinghouse standards.

**Statutory authority:**

S. 227.11 (2) (a), Stats.

**Estimate of staff time required:**

The Department estimates it will take approximately 100 hours to develop this rule order.

**Revenue****Subject:**

S. Tax 11.96 – Relating to delivery of an ordinance to adopt or repeal a county or premier resort area tax.

**Description of policy issues:***Objective of the proposed rule:*

The objectives of the proposed rule are to:

Set forth Department policy relating to what constitutes timely delivery of an ordinance to adopt or repeal a county sales and use tax or a premier resort area tax.

*Policy analysis:*

This is a new rule which will state the Department's policy relating to timely delivery of the ordinance described above. If the rule is not promulgated, the Department's official policy will not be codified in a rule.

**Statutory authority:**

S. 227.11 (2) (a), Stats.

**Estimate of staff time required:**

The Department estimates it will take approximately 30 hours to develop this rule order.

**Transportation****Subject:**

Ch. Trans 100 – Relating to the incorporation of the significant changes in the financial responsibility laws mandated by 1997 Wis. Act 84.

**Description of policy issues:***Description of the objective of the rule:*

This rule-making will amend ch. Trans 100 to incorporate the significant changes in the financial responsibility laws mandated by 1997 Wis. Act 84.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

The current rule was created in 1985 and last updated in April 1994. Language throughout the current rule refers to the revocation of operating and registration privileges for failure to comply with the provisions of the safety responsibility law following a motor vehicle accident. Act 84, effective May 1, 2000, changes all revocations under ch. 344, Stats., to suspensions.

Judgments arising out of uninsured motor vehicle accidents which are certified to DOT by the courts under s. 344.05, Stats., are also affected by Act 84. These judgments will result in the suspension of the uninsured's operating and registration privileges instead of the revocations under current law. Ch. Trans 100 currently contains no references to these judgments. This rule-making will establish procedures for processing suspensions resulting from nonpayment of a judgment.

**Statutory authority for the rule:**

SS. 85.16 (1) and 227.11, Stats.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

75 hours.

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse**

*Please check the Bulletin of Proceedings for further information on a particular rule.*

#### **Dentistry Examining Board**

##### **Rule Submittal Date**

On June 14, 1999, the Dentistry Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 447.02 (2) (d), Stats.

The proposed rule-making order relates to the oral systemic premedications and subgingival sustained release chemotherapeutic agents that may be administered by a licensed dental hygienist.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be held on September 1, 1999 at 9:30 a.m. in Room 179A, 1400 East Washington Ave., Madison, Wisconsin.

##### **Contact Information**

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

#### **Medical Examining Board**

##### **Rule Submittal Date**

On June 14, 1999, the Medical Examining Board submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

Statutory authority:

SS. 15.08 (5) (b), 227.11 (2) and 448.40, Stats.

The proposed rule-making order relates to the repeal of rules relating to the practice of podiatry.

##### **Agency Procedure for Promulgation**

A 30-day Notice will be published in the Wisconsin Administrative Register.

##### **Contact Information**

Pamela Haack  
Administrative Rules Coordinator  
Telephone (608) 266-0495

#### **Natural Resources**

##### **(Fish, Game, etc., Chs. NR 1--)**

##### **Rule Submittal Date**

On June 14, 1999, the Department of Natural Resources submitted a proposed rule [WM-3-99] to the Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects ch. NR 10, relating to the 1999 migratory game bird season.

##### **Agency Procedure for Promulgation**

A public hearing is required and public hearings will be held on August 9, 10, 11 and 12, 1999.

##### **Contact Information**

Jon Bergquist  
Bureau of Wildlife Management  
Telephone (608) 266-8841

#### **Natural Resources**

##### **(Fish, Game, etc., Chs. NR 1--)**

##### **Rule Submittal Date**

On June 14, 1999, the Department of Natural Resources submitted a proposed rule [LE-22-99] to the Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects s. NR 20.12, relating to set and bank pole marking.

##### **Agency Procedure for Promulgation**

A public hearing is required and will be held in August, 1999.

##### **Contact Information**

Gary Homuth  
Bureau of Law Enforcement  
Telephone (608) 266-3244

#### **Natural Resources**

##### **(Investigation and Remediation, Chs. NR 700--)**

##### **Rule Submittal Date**

On June 14, 1999, the Department of Natural Resources submitted a proposed rule [RR-28-99] to the Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule-making order affects chs. NR 716, 720, 722, 726 and 746, relating to sites contaminated with petroleum products from petroleum storage tanks.

##### **Agency Procedure for Promulgation**

A public hearing is required and public hearings will be held on July 12, 13, 14 and 15, 1999.

**Contact Information**

Patrick McCutcheon  
Bureau of Remediation and Redevelopment  
Telephone (608) 264-6019

**Natural Resources****(Water Supply, Chs. NR 800--)****Rule Submittal Date**

On June 14, 1999, the Department of Natural Resources submitted a proposed rule [DG-24-99] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule-making order affects s. NR 812.05, relating to grouting practices used for private wells by construction trades.

**Agency Procedure for Promulgation**

A public hearing is required and public hearings will be held on July 12 and 13, 1999.

**Contact Information**

Richard Roth  
Bureau of Drinking Water and Groundwater  
Telephone (608) 266-2438

**Revenue****Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on June 14, 1999 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule order repeals and recreates s. Tax 11.64, relating to background music and other cable television system services.

**Agency Procedure for Promulgation**

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

**Contact Information**

If you have questions regarding this rule, you may contact:

Mark Wipperfurth  
Income, Sales, and Excise Tax Division  
Telephone (608) 266-8253

**Revenue****Rule Submittal Date**

Notice is hereby given, pursuant to s. 227.14 (4m), Stats., that on June 14, 1999 the Wisconsin Department of Revenue submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule order amends s. Tax 11.66, relating to telecommunications services.

**Agency Procedure for Promulgation**

The Department intends to promulgate the proposed rule order without a public hearing, pursuant to s. 227.16 (2) (e), Stats. The Office of the Secretary is primarily responsible for the promulgation of the rule order.

**Contact Information**

If you have questions regarding this rule, you may contact:

Mark Wipperfurth  
Income, Sales, and Excise Tax Division  
Telephone (608) 266-8253

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# NOTICE SECTION

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## Notice of Hearing Health & Family Services (Health, Chs. HFS 110–) *[CR 99–81]*

Notice is hereby given that, pursuant to ss. 253.13 (1) and 227.11 (2) (a), Stats., the Department of Health and Family Services will hold a public hearing to consider the amendment of s. HFS 115.04 (intro.) and (1) to (7) and 115.06, Wis. Adm. Code, and the creation of s. HFS 115.04 (8), Wis. Adm. Code, relating to screening of newborn children for congenital and metabolic disorders.

### Hearing Information

July 14, 1999 Wednesday Beginning at 10 a.m.	2nd Floor Conference Room State Laboratory of Hygiene 2601 Agriculture Dr.(Intersects with Pflaum Rd. a few blocks east of Hwy. 51) MADISON, WI
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The hearing site is fully accessible to people with disabilities.

### Analysis Prepared by the Department of Health and Family Services

The Department of Health and Family Services administers the Newborn Screening Program under s. 253.13, Stats. Under that program a sample of blood is drawn from nearly every newborn infant in the state before a child is discharged from the hospital, if the child was born in a hospital, or within one week of birth, if the child was born elsewhere, and tests are conducted by the State Laboratory of Hygiene on each blood sample to detect any of the congenital or metabolic disorders specified in ch. HFS 115, the Department's rules for the program. The conditions for which testing is done were specified by statute before November 1, 1992. Since then, s. 253.13 (1), Stats., has directed the Department to specify those conditions by rule.

The Department adds to or deletes from the rules conditions for testing of blood samples on the advice of the Newborn Screening Advisory Group made up of medical consultants, State Laboratory of Hygiene staff and other persons with expertise and experience in dealing with congenital and metabolic disorders, and in accordance with 6 criteria listed in s. HFS 115.06. The criteria include the availability of effective therapy for the condition and potential for successful treatment, the availability of mechanisms for determining the effectiveness of test procedures, and the expected benefits to children and society in relation to the risks and costs of the testing.

The Newborn Screening Advisory Group has unanimously supported the recommendation of Department staff to add at this time Medium Chain Acyl–CoA Dehydrogenase Deficiency (MCAD) and 13 other fatty oxidation and branched chain amino acid disorders as a new condition for which testing of blood samples drawn from newborns is conducted. It is estimated that through this testing 15 to 20 babies a year in Wisconsin will be identified as having one of the disorders. Morbidity and mortality are high for persons with the condition if treatment is not begun before the onset of clinical symptoms. Prompt initiation of treatment results in nearly 100% survival and normal development. Treatment is simple (diet supplementation and regulation) and inexpensive. The screening technology has only recently been developed.

This rulemaking order adds MCAD and the other 13 fatty acid oxidation and branched chain amino acid disorders as a new condition to the list of conditions in s. HFS 115.04 for which blood samples taken from newborns will be tested. The order also converts the lists found in ss. HFS 115.04 and 115.06 to a new form required by revised drafting standards.

### Text of Rules

SECTION 1. HFS 115.04 (intro.) and (1) to (7) are amended to read:

**HFS 115.04 Congenital and metabolic disorders.** Blood samples taken from newborns as required under s. 253.13 (1), Stats., shall be tested by the state laboratory for all of the following conditions:

- (1) Phenylketonuria (PKU), ICD–9–CM 270.1<sup>1/2</sup>
- (2) Galactosemia, ICD–9–CM 271.1<sup>1/2</sup>
- (3) Congenital hypothyroidism, ICD–9–CM 243<sup>1/4</sup>
- (4) Sickle cell disease and related hemoglobin abnormalities, ICD–9–CM 282.6<sup>1/4</sup>



- (5) Biotinidase deficiency, ICD-9-CM 266.9;
- (6) Congenital adrenal hyperplasia, ICD-9-CM 255.2; and
- (7) Cystic fibrosis, ICD-9-CM 277.0.

**SECTION 2.** HFS 115.04 (8) is created to read:

HFS 115.04 (8) Medium chain acyl-coenzyme A dehydrogenase deficiency (MCAD) and related disorders of lipid metabolism, ICD-9-CM 272.9.

**SECTION 3.** HFS 115.06 is amended to read:

**HFS 115.06 Criteria for adding or deleting conditions.** In determining which disorders are to be added or deleted from s. HFS 115.04, the department shall seek the advice and guidance of medical consultants, staff of the state laboratory and other persons who have expertise and experience in dealing with congenital and metabolic disorders. Criteria to be considered in adding or deleting disorders shall include all of the following:

- (1) Characteristics of the specific disorder, including disease incidence, morbidity and mortality;
- (2) The availability of effective therapy and potential for successful treatment;
- (3) Characteristics of the test, including sensitivity, specificity, feasibility for mass screening and cost;
- (4) The availability of mechanisms for determining the effectiveness of test procedures;
- (5) Characteristics of the screening program, including the ability to collect and analyze specimens reliably and promptly, the ability to report test results quickly and accurately and the existence of adequate follow-up and management programs; and
- (6) The expected benefits to children and society in relation to the risks and costs associated with testing for the specific condition.

### **Contact Person**

To find out more about the hearing, write or phone:

Michael Pfrang  
Division of Public Health  
1414 E. Washington Avenue  
Room 251  
Madison, Wisconsin 53703  
(608) 266-7550  
if you are hearing impaired,  
phone 1-800-947-3529

If you are hearing or visually impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter or a non-English, large-print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rules received at the above address no later than **July 21, 1999** will be given the same consideration as testimony presented at a hearing.

### **Fiscal Estimate**

Under s. 253.13, Stats., a blood sample is required to be taken from each newborn infant in the state and that one blood sample is currently tested to determine if the child has one of seven different congenital or metabolic disorders, including phenylketonuria (PKU) and cystic fibrosis, listed in the Department's rules at HFS 115.04. Very few children are found to have one of the listed conditions but, for those who do, effective therapy is available and the potential for successful treatment is high if treatment is begun early. This order adds a new condition to the list of congenital and metabolic disorders for which testing of blood samples is done.

Addition of the new condition to s. HFS 115.04 will increase State Laboratory of Hygiene costs, that is, the laboratory costs of the Newborn Screening Program, by about \$275,000 a year or \$4.00 per newborn screened. The annual cost for follow-up treatment, which is funded by a Department surcharge added to the laboratory costs, is estimated at about \$105,000 or about \$1.50 per newborn screened. The cost of providing screening and treatment for the seven current disorders is borne by parents of newborns through a screening charge which is part of the delivery cost for an infant born in Wisconsin, and this cost will be increased by about \$5.50 by the rule addition. For most parents this is an expense covered by third party payers whose policies cover the cost of labor and delivery.

This rule change will not affect the expenditures or revenues of state government or local governments. Local governments are not involved with the administration of the Newborn Screening Program and are not affected by the Program. Program administration costs will increase for the State Laboratory of Hygiene and the Department but those costs will be fully covered by the increased newborn screening fees paid by parents or third party payers on behalf of parents.

### **Initial Regulatory Flexibility Analysis**

This change to ch. HFS 115 will not affect small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. The addition of another condition for which a blood sample is screened will affect the State Laboratory of Hygiene, the Department (for follow-up treatment), newborn children identified as having the particular condition (they will benefit from follow-up treatment) and their parents, and all parents of

newborn children or their third-party payers for the additional cost (about \$5.50) of a delivery. No third-party payer is likely to be a small business, and in any case would likely absorb or pass-on increased costs to parents.

## **Notice of Proposed Rule**

### ***Medical Examining Board***

***[CR 99-98]***

Notice is hereby given that pursuant to authority vested in the Medical Examining Board in ss. 15.08 (5) (b), 227.11 (2) and 448.40, Stats., and interpreting ss. 448.03 (3) (c), 448.03 (4) (title), 448.04 (1) (d), 448.05 (3) and 448.10 (2), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Medical Examining Board will adopt the following rules as proposed in this notice, without public hearing unless, within 30 days after publication of this notice, **July 1, 1999**, the Medical Examining Board is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

### ***Analysis prepared by the Department of Regulation and Licensing***

Statutes authorizing promulgation: ss. 15.08 (5) (b), 227.11(2) and 448.40

Statutes interpreted: ss. 448.03 (3) (c), 448.03 (4) (title), 448.04 (1) (d), 448.05 (3) and 448.10 (2)

In this proposed rule-making order the Medical Examining Board is repealing rules relating to podiatrists as a result of 1997 Wisconsin Act 175, which created the Podiatrists Affiliated Credentialing Board. Therefore, Chapter Med 6 in its entirety is repealed. References to podiatrists in ss. Med 10.02 (v) and (y), Med 13.03 (1) (c) and Med 13.05 (1) (m) are also repealed. Sections Med 10.02 (2) (z), Chapter Med 13 (title), Med 13.01, 13.02, 13.05 (2), 13.06, 17.02 (2), 19.08 (2) (a), 21.01, 21.02 (2) and 21.03 (1) and (2) (intro.) are amended to remove references to podiatrists.

### ***Text of Rule***

**SECTION 1.** Chapter Med 6 is repealed.

**SECTION 2.** Med 10.02 (2) (v) and (y) are repealed.

**SECTION 3.** Med 10.02 (2) (za) is amended to read:

Med 10.02 (2) (za) Failure by a physician, ~~podiatrist~~ or physician assistant to maintain patient health care records consistent with the requirements of ch. Med 21.

**SECTION 4.** Chapter Med 13 (title) is amended to read:

#### **CONTINUING MEDICAL EDUCATION FOR PHYSICIANS AND ~~PODIATRISTS~~**

**SECTION 5.** Med 13.01 is amended to read:

Med 13.01 **Authority and purpose.** The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2), and 448.13, Stats., and govern the biennial training requirements for physicians ~~and podiatrists~~ as provided under s. 448.13, Stats.

**SECTION 6.** Med 13.02 is amended to read:

Med 13.02 (1) Each physician ~~or podiatrist~~ required to complete the biennial training requirements provided under s. 448.13, Stats., shall, in each second year at the time of making application for a certificate of registration as required under s. 448.07, Stats., sign a statement on the application for registration certifying that the physician ~~or podiatrist~~ has completed at least 30 hours of acceptable continuing medical educational programs within the 2 calendar years immediately preceding the calendar year for which application for registration is made. ~~The 30 hours of continuing medical education for podiatrists first applies to applications that are submitted to the department to renew a license to practice podiatry that expires on November 1, 1997.~~

(2) A physician ~~or podiatrist~~ may apply to the board for waiver of the requirements of this chapter on grounds of prolonged illness or disability or other similar circumstances, and each such case will be considered individually on its merits by the board.

**SECTION 7.** Med 13.03 (1) (c) is repealed.

**SECTION 8.** Med 13.05 (1m) is repealed.

**SECTION 9.** Med 13.05 (2) is amended to read:

Med 13.05 (2) **RETENTION REQUIREMENT.** Evidence of compliance shall be retained by each physician ~~or podiatrist~~ through the biennium for which 30 hours of credit are required for registration.

**SECTION 10.** Med 13.06 is amended to read:

Med 13.06 **Audit.** The board may require any physician ~~or podiatrist~~ to submit his or her evidence of compliance to the board during the biennium for which 30 hours of credit are required for registration to audit compliance.

**SECTION 11.** Med 17.02 (2) is amended to read:

Med 17.02 (2) “Practitioner” means a person holding a license to practice medicine and surgery or to practice podiatry.

**SECTION 12.** Med 19.08 (2) (a) is amended to read:

Med 19.08 (2) (a) Evaluation and rehabilitative treatment shall be based on a referral from a licensed physician, dentist, psychologist or chiropractor or podiatrist.

**SECTION 13.** Med 21.01 is amended to read:

Med 21.01 **Authority and purpose.** The rules in this chapter are adopted by the board under the authority of ss. 15.08 (5) (b), 227.11 (2) and 448.40 (1), Stats., to govern the practice of physicians, podiatrists and physician assistants in the preparation and retention of patient health care records.

**SECTION 14.** Med 21.02 (2) is amended to read:

Med 21.02 (2) “Patient” means a person who receives health care services from a physician, podiatrist or physician assistant.

**SECTION 15.** Med 21.03 (1) and (2) (intro.) are amended to read:

Med 21.03 (1) A physician, podiatrist or physician assistant shall maintain patient health care records on every patient administered to for a period of not less than 5 years after the date of the last entry, or for such longer period as may be otherwise required by law.

(2) (intro.) A patient health care record prepared by a physician, podiatrist or physician assistant shall contain the following clinical health care information which applies to the patient’s medical condition:

## **Fiscal Estimate**

1. The anticipated fiscal effect on the fiscal liability and revenues of any local unit of government of the proposed rule is: \$0.00.
2. The projected anticipated state fiscal effect during the current biennium of the proposed rule is: \$0.00.
3. The projected net annualized fiscal impact on state funds of the proposed rule is: \$0.00.

## **Initial Regulatory Flexibility Analysis**

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

## **Copies of Rule and Contact Person**

Copies of this proposed rule are available without cost upon request to: Pamela Haack, Department of Regulation and Licensing, Office of Administrative Rules, 1400 East Washington Ave., Room 171, P.O. Box 8935, Madison, WI 53708 (608) 266-0495.

## **Notice of Hearings**

### *Natural Resources*

*(Fish, Game, etc., Chs. NR 1--)*

*[CR 99-97]*

Notice is hereby given that pursuant to ss. 29.014, 29.197, 29.041 and 227.11 (2) (a), Stats., interpreting ss. 29.014, 29.041 and 29.197, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 1999 migratory game bird season.

## **Analysis**

The proposed regulations include:

Ducks – The state is divided into 2 zones each with 60-day seasons. The season in both zones begins at noon October 2 and continues for 60 days, closing November 30. The daily bag limit in both zones is 6 ducks, including 4 mallard, of which only one may be a hen, and one canvasback for the entire 60 days in both zones.

Canada geese – The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 68 days; Horicon Zone – 86 days; Exterior Zone – 21 days; and Mississippi River – 70 days. The Burnett County and New Auburn subzones are closed to Canada goose hunting.

The special youth waterfowl hunt event will be expanded to include nonresident youth hunters with hunter education certificates or the equivalent certification from another state or province.

## **Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

## **Environmental Assessment**

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department’s consideration of the impacts of the proposal and reasonable alternatives.

## Hearing Information

Notice is hereby further given that the public hearings will be held on:

<u>Date and Time:</u>	<u>Location:</u>
August 9, 1999 Monday 7:00 p.m.	Basement Auditorium La Crosse Co. Adm. Center 400 North 4 <sup>th</sup> Street LA CROSSE, WI
August 10, 1999 Tuesday 7:00 p.m.	Conference Room 101 DNR Service Center 107 Sutliff Ave. RHINELANDER, WI
August 11, 1999 Wednesday 7:00 p.m.	Room 604 Green Bay City Hall 100 N. Jefferson St. GREEN BAY, WI
August 12, 1999 Thursday 7:00 p.m.	Conference Room Comfort Inn Suites Hwy. J and I 94 WAUKESHA, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jon Bergquist at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

## Written Comments and Contact Information

Written comments on the proposed rule may be submitted to Mr. Jon Bergquist, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **August 12, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM-3-99] and fiscal estimate may be obtained from Mr. Bergquist.

## Fiscal Estimate

### Fiscal Impact:

The proposed changes will not result in any significant changes in spending or revenue. There are no local government costs anticipated due to the provisions of this bill.

## Notice of Joint Hearings Natural Resources and Commerce (Investigation and Remediation, Chs. NR 700--) (PECFA Interagency Responsibilities, Ch. Comm 46) [CR 99-94]

Notice is hereby given that, pursuant to s. 227.11 (2) (a), Stats., interpreting ss. 101.143, 101.144, 292.11 and 292.31 and ch. 160, Stats., the Department of Natural Resources and the Department of Commerce will hold joint public hearings on the creation of a joint permanent rule in ch. Comm 46 and ch. NR 746, Wis. Adm. Code, relating to sites contaminated with petroleum products from petroleum storage tanks, and the Department of Natural Resources will invite public comment at these same hearings on amendments to chs. NR 716, 720, 722 and 726, Wis. Adm. Code, relating to soil cleanup standards and the investigation, remedy selection, and closure of sites contaminated with petroleum products from petroleum storage tanks.

Notice is hereby further given that pursuant to ss. 227.11 (2) (a), 227.24 and 227.26 (2) (b), Stats., interpreting ss. 101.143, 101.144, 292.11 and 292.31 and ch. 160, Stats., the Department of Natural Resources and the Department of Commerce will also invite public comment at these same hearings on the repeal and recreation of emergency rule ch. Comm 46, Wis. Adm. Code, relating to sites contaminated with petroleum products from petroleum storage tanks.

## ***Initial Regulatory Flexibility Analysis***

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed permanent rules will have any negative economic impact on small businesses.

## ***Environmental Assessments***

Notice is hereby further given that the Department of Natural Resources has made a preliminary determination that the proposed creation of ch. NR 746 and the proposed amendments to chs. NR 716, 720, 722, and 726, Wis. Adm. Code, do not involve significant adverse environmental effects and do not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department of Natural Resources may prepare an environmental analysis before proceeding with the proposed rule-making. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice is hereby further given that the Department of Commerce has made a preliminary determination that the proposed creation of ch. Comm 46 does not involve significant adverse environmental effects and does not need an environmental analysis under ch. Comm 107, Wis. Adm. Code. However, based on the comments received, the Department of Commerce may prepare an environmental analysis before proceeding with the proposed rule-making. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

## ***Hearing Information***

Notice is hereby further given that the hearings will be held on:

<b>Date and Time:</b>	<b>Location:</b>
<b>July 12, 1999 Monday 9:00 a.m.</b>	<b>Room 027, GEF #2 Bldg. 101 South Webster St. MADISON, WI</b>
<b>July 13, 1999 Tuesday 1:30 p.m.</b>	<b>Auditorium Havenwoods Environmental Awareness Center 6121 N. Hopkins St. MILWAUKEE, WI</b>
<b>July 14, 1999 Wednesday 11:00 a.m.</b>	<b>Room C215 Northeast Wis. Tech. College 2740 West Mason St. GREEN BAY, WI</b>
<b>July 15, 1999 Thursday 11:00 a.m.</b>	<b>Room 158/185 DNR Regional Service Ctr. 1300 West Clairemont Ave. EAU CLAIRE, WI</b>

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Patrick McCutcheon at (608) 264-6019 with specific information on your request at least 5 business days before the date of the scheduled hearing.

## ***Written Comments and Contact Information***

Written comments on the permanent rules proposed by the Department of Natural Resources and the recreated emergency rule ch. Comm 46 may be submitted to Patrick McCutcheon, Bureau for Remediation and Redevelopment, DNR, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921 no later than **July 20, 1999**. Written comments on the permanent rule proposed by the Department of Commerce and the recreated emergency rule may be submitted to Sam Rockweiler, Department of Commerce, 201 W. Washington Avenue, 4<sup>th</sup> Floor, PO Box 2689, Madison, WI 53707-2689 no later than **July 20, 1999**. Written comments that are mailed to the Departments will be given the same weight and effect as oral statements presented at the hearings.

## ***Copies of Rules***

A copy of emergency rule ch. Comm 46 and the proposed permanent rules under consideration by the Department of Natural Resources [RR-28-99] and [RR-23-99(E)], and the corresponding fiscal estimates, may be obtained from Patrick McCutcheon at (608) 264-6019. A copy of the emergency rule ch. Comm 46 and the proposed permanent rule under consideration by the Department of Commerce, and the corresponding fiscal estimate, may be obtained from Sam Rockweiler at (608) 266-0797.

## ***Fiscal Estimate***

Summary of Bill/Rule:



Creation of ch. NR 746 and related revisions (to chs. NR 716, Site Investigations; NR 720, Soil Standards; NR 722, Standards for Selection of Remedial Actions; and NR 726, Case Closure) include new requirements for classification of sites, and create additional risk criteria to be used in selecting responses to contaminated sites. The changes also allow closure of clay-type sites after the investigation, if all the risk criteria are met, and all conditions of closure are met. This change is based on an assumption that natural attenuation will eventually reduce groundwater contamination below enforcement standards at clay-type sites, without any active remedies being implemented.

Long-Range Fiscal Implications:

Contamination will remain at clay-type sites for decades before groundwater enforcement standards are met. State monies for cleanup may be needed later. In addition, further evaluation of the workload implications of the new rule will be needed to determine whether it is more or less labor-intensive than current procedures for overseeing cleanups.

## **Notice of Hearings**

### *Natural Resources*

*(Water Supply, Chs. NR 800--)*  
*[CR 99-95]*

Notice is hereby given that pursuant to ss. 280.11 (1), 281.11, 281.12 (1), 281.17 (8), 283.001 (2) and 227.11 (2) (a), Stats., interpreting s. 281.17 (8), Stats., the Department of Natural Resources will hold public hearings on the amendment of s. NR 812.05, Wis. Adm. Code, relating to the disposal of pollutants, injection prohibition in wells.

### **Agency Analysis**

The proposed amendment is intended to clarify the Department's existing policy regarding the regulation of the underground placement of cement, bentonite grout or other Department-approved materials used by the construction trades for geotechnical grouting, soil stabilization and foundation support. It explicitly states which types of activities are not subject to Wisconsin's well injection prohibition.

### **Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

### **Environmental Assessment**

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review documents would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### **Hearing Information**

Notice is hereby further given that the hearings will be held on:

<u>Date and Time:</u>	<u>Location:</u>
July 12, 1999 Monday 2:00 p.m.	Room 717, GEF #2 101 South Webster St. MADISON, WI
July 13, 1999 Tuesday 1:00 p.m.	Conference Room Marathon Co. Courthouse 500 Forest St. WAUSAU, WI

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Richard Roth at (608) 266-2438 with specific information on your request at least 10 days before the date of the scheduled hearing.

### **Written Comments**

Written comments on the proposed rule may be submitted to Mr. Richard T. Roth, Bureau of Drinking Water and Groundwater, P.O. Box 7921, Madison, WI 53707 no later than **July 16, 1999**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [DG-24-99] and fiscal estimate may be obtained from Mr. Roth.

### **Fiscal Estimate**

Fiscal Impact:

The proposed amendment of s. NR 812.05 will have no fiscal impact on state or local governments.

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**NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,  
UNDER S. 227.19, STATS.**

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

**Commerce (CR 99-29):**

Ch. Comm 7 – Relating to explosive materials.

**Commerce (CR 99-50):**

Chs. Comm 16 and 17 – Relating to electrical construction and inspection.

**Commerce (CR 99-75):**

Ch. Comm 112 – Relating to the Wisconsin Development Zone program.

**Natural Resources (CR 99-23):**

Ch. NR 20 and ss. NR 21.04, 23.05 and 26.26 – Relating to fishing regulations for inland, outlying and boundary waters and fish refuges.

**Natural Resources (CR 99-24):**

Chs. NR 10 and 15 and s. NR 27.03 – Relating to hunting and trapping.

**Natural Resources (CR 99-42):**

Ch. NR 10 and ss. NR 15.03 and 19.07 – Relating to hunting and trapping.

**Public Service Commission (CR 99-3):**

Ch. PSC 135 – Relating to gas safety.

**Revenue (CR 99-11):**

SS. Tax 11.14 and 11.53 – Relating to sales and use tax exemption certificates and the sales and use tax treatment of temporary events.

**Revenue (CR 99-26):**

SS. Tax 11.26, 11.32, 11.41 and 11.83 – Relating to the sales and use tax treatment of gross receipts and sales price, manufacturing exemption and motor vehicles.

**Revenue (CR 99-62):**

S. Tax 11.33 (4) (a) and (g) – Relating to auction sales of personal farm property or household goods, and exempt purchases for resale by nonprofit organizations.

**Social Workers, Marriage and Family Therapists and Professional Counselors Examining Board (CR 99-2):**

S. SFC 3.13 – Relating to criteria for approval of other human services degree programs for eligibility for a social worker training certificate and supervision of training certificate holders.



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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

### **Agriculture, Trade and Consumer Protection** **(CR 98-117):**

An order repealing and recreating ch. ATPC 127, relating to direct marketing (home solicitation selling).  
Effective 08-01-99.

### **Employe Trust Funds (CR 99-27):**

An order affecting ss. ETF 10.01, 10.03, 11.02, 20.35 and 50.30, relating to dividing Wisconsin Retirement System (WRS) accounts or annuities per a qualified domestic relations order (QDRO).  
Effective 08-01-99.

### **Health and Family Services (CR 99-20):**

An order creating ch. HFS 114, relating to neonatal intensive care unit training grants.  
Effective 08-01-99.

### **Insurance, Commissioner of (CR 99-13):**

An order affecting s. Ins 3.39 (34) (b), relating to guarantee issue eligibility for Medicare Supplement insurance.  
Effective 08-01-99.

### **Insurance, Commissioner of (CR 99-34):**

An order affecting s. Ins 16.01, relating to annual billings for the examination of domestic insurers.  
Effective 08-01-99.

### **Public Service Commission (CR 99-53):**

An order amending s. PSC 132.02 (3), relating to the ch. PSC 132 definition of "public utility" and cable operators' access to railroad rights-of-way.  
Effective 08-01-99.

### **Transportation (CR 99-49):**

An order amending ss. Trans 276.07 and 276.09, relating to allowing the operation of "double bottoms" (and certain other vehicles) on certain specified highways.  
Effective 08-01-99.

### **Workforce Development (CR 98-130):**

An order renumbering chs. HSS 80 to 81 as DWD 40 to 41, and creating ch. DWD 43, relating to child support administrative enforcement.  
Effective 08-01-99.

### **Workforce Development (CR 98-204):**

An order affecting chs. HFS 55 and DWD 55, relating to criminal record background checks for certified day care operators, employees and contractors of certified day care operators, and nonclient residents at certified day care locations.  
Effective 08-01-99.

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## RULES PUBLISHED IN THIS WIS. ADM. REGISTER

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*The following administrative rule orders have been adopted and published in the **June 30, 1999 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

### **Agriculture, Trade and Consumer Protection (CR 98-154):**

An order affecting chs. ATPC 1, 2, 40, 42, 45, 50 and 161 and Jus 2 and ss. ATPC 92.05, 100.93, 109.03 and 121.01, relating to technical and remedial rule changes pertaining to contested case procedures, farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices.

Effective 07-01-99.

### **Commerce (CR 98-207):**

An order affecting ch. Comm 90, relating to the design and construction of public swimming pools.

Effective 07-01-99.

### **Corrections (CR 98-193):**

An order affecting ch. DOC 349, relating to holding, in municipal lockup facilities, juveniles who are alleged to have committed a juvenile act.

Effective 07-01-99.

### **Corrections (CR 98-208):**

An order amending s. DOC 328.21 (3) and (7) (intro.), relating to the search and seizure of probation or parole offenders.

Effective 07-01-99.

### **Financial Institutions--Banking (CR 99-12):**

An order affecting chs. DFI-Bkg 41 and RL 41, relating to the fees and registration for mortgage bankers, loan originators and mortgage brokers.

Effective 07-01-99.

### **Health and Family Services (CR 98-188):**

An order affecting ch. HSS 129 and creating ch. HFS 13, relating to reporting and investigation of caregiver misconduct and operation of the caregiver misconduct registry.

Effective 07-01-99.

### **Health and Family Services (CR 98-191):**

An order creating ch. HFS 12, relating to uniform procedures for checking the backgrounds of persons who apply to provide or are providing care or treatment to people who need that care or treatment, and for barring persons (because of specified convictions, charges or findings substantially related to the care of clients) from: operating a service provider organization, providing care or treatment to the clients of a service provider or otherwise having contact with the clients of a service provider.

Effective 07-01-99.

### **Insurance, Commissioner of (CR 99-14):**

An order repealing and recreating s. Ins 2.80, relating to valuation of life insurance policies model regulation.

Effective 07-01-99.

### **Natural Resources (CR 98-92):**

An order affecting ss. NR 10.104 and 10.28, relating to deer management units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

Effective 07-01-99.

### **Psychology Examining Board (CR 98-206):**

An order creating chs. Psy 1 to 5, relating to requirements for examination and licensure of psychologists, renewal and conduct.

Effective 07-01-99.

### **Public Defender (CR 99-33):**

An order creating s. PD 6.04 (5), relating to multiple appointments on the same case.

Effective 07-01-99.

### **Public Instruction (CR 98-164):**

An order repealing and recreating s. PI 3.03 (6) (b) 3., relating to alternative teacher permits.

Effective 07-01-99.

### **Revenue (CR 98-144):**

An order affecting ss. Tax 11.19 and 11.70, relating to printed material exemptions and the sales and use tax treatment of advertising agencies.

Effective 07-01-99.

### **Revenue (CR 98-171):**

An order affecting s. Tax 11.68, relating to construction contractors.

Effective 07-01-99.

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## SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

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The following administrative rule revisions and corrections have taken place in June, 1999, and will be effective as indicated in the history note for each particular section. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### REVISIONS

#### Agriculture, Trade and Consumer Protection:

##### Ch. ATCP 1

- S. ATCP 1.01 (1) to (11), (12) (c) and (13)
- S. ATCP 1.03 (1) (b) and (3) (d)
- S. ATCP 1.10 (1) (intro.) and (2) to (4)
- S. ATCP 1.11 (1) (intro.) and (2)
- S. ATCP 1.13 (1) and (5)
- S. ATCP 1.14 (1) (intro.), (2) (a) and (b) and (4) (a) and (c)
- S. ATCP 1.15 (entire section)
- S. ATCP 1.16 (1)
- S. ATCP 1.20 (3)
- S. ATCP 1.21 (1) (a), (2) and (3)
- S. ATCP 1.22 (1) and (3)
- S. ATCP 1.23 (2), (3) (a), (4) and (5)
- S. ATCP 1.25 (1) (a) (intro.), (b) and (c), (2), (3), (4) (b) and (c), (5) and (6)
- S. ATCP 1.26 (entire section)
- S. ATCP 1.30 (1) and (2) (a)
- S. ATCP 1.31 (2) and (4)
- S. ATCP 1.32 (3) (a) and (b)
- S. ATCP 1.33 (entire section)

##### Ch. ATCP 2 was renumbered to ch. ATCP 162.

##### Ch. ATCP 40

- S. ATCP 40.02 (1) to (3) and (4) (a) and (b)
- S. ATCP 40.04 (5) (c)

##### Ch. ATCP 42

- S. ATCP 42.06 (3)
- S. ATCP 42.16 (1) (b)
- S. ATCP 42.32 (2) (b)
- S. ATCP 42.40 (4) (b)
- S. ATCP 42.44 (6) (a)
- S. ATCP 42.54 (1) (a)

##### Ch. ATCP 45 (entire chapter)

##### Ch. ATCP 50

- S. ATCP 50.01 (15)
- S. ATCP 50.54 (1) (zd)
- S. ATCP 50.62 (7) (e)
- S. ATCP 50.64 (1) (w)
- S. ATCP 50.665 (entire section)
- S. ATCP 50.76 (3) (a)
- S. ATCP 50.79 (5) (a)

- S. ATCP 50.82 (5) (a)
- S. ATCP 50.84 (4) (b)
- S. ATCP 50.90 (4) (a)
- S. ATCP 50.94 (3) (a)
- S. ATCP 50.95 (2) (ze) and (zf)
- S. ATCP 50.96 (6) (c)

##### Ch. ATCP 92

- S. ATCP 92.05 (4)

##### Ch. ATCP 109

- S. ATCP 109.03 (4)

##### Ch. ATCP 118 (entire chapter) was renumbered from ch. Jus 2.

- S. ATCP 118.01 (2) (d)
- S. ATCP 118.02 (2) (b)
- S. ATCP 118.03 (entire section)

##### Ch. ATCP 121

- S. ATCP 121.01 (4)

##### Ch. ATCP 134

- S. ATCP 134.01 (7)

##### Ch. ATCP 161

- S. ATCP 161.01 (entire section)
- S. ATCP 161.02 (4)
- S. ATCP 161.03 (2) (i)

#### Commerce:

##### (Public Swimming Pools, Ch. Comm 90--)

##### Ch. Comm 90

- S. Comm 90.03 (2e), (12e), (18m) and (18s)
- S. Comm 90.04 (4) (c)
- S. Comm 90.09 (5)
- S. Comm 90.19 (2) (d), (6) (a) and (c) and (8) (c)

#### Corrections:

##### Ch. DOC 328

- S. DOC 328.21 (3) (a) and (7) (intro.)

##### Ch. DOC 349

- S. DOC 349.01 (entire section)
- S. DOC 349.03 (1m), (4m), (10m) and (14m)
- S. DOC 349.04 (1) and (2)
- S. DOC 349.16 (1) (c) and (d)
- S. DOC 349.21 (entire section)

**Financial Institutions--Banking:**

**Ch. DFI-Bkg 41** (entire chapter) was renumbered from **ch. RL 41** and was affected by revision.

**Health and Family Services:**

(*Management & Technology, etc., Chs. HFS 1--*)

**Ch. HFS 12** (entire chapter)

**Ch. HFS 13** (entire chapter)

(*Health, Chs. HFS 110--*)

**Ch. HFS 129**

S. HFS 129.03 (1), (6), (8), (10) and (11m)

S. HFS 129.07 (2) (f)

S. HFS 129.10 (2) and (5)

S. HFS 129.11 (entire section)

S. HFS 129.12 (2)

**Insurance, Commissioner of:**

**Ch. Ins 2**

S. Ins 2.80 (entire section)

**Justice, Dept. of:**

**Ch. Jus 2** (entire chapter) was renumbered to be **ch. ATCP 118**.

**Natural Resources:**

(*Fish, Game, etc., Chs. NR 1--*)

**Ch. NR 10**

S. NR 10.01 (1) (b), (g), (u) and (v)

S. NR 10.104 (4) (b)

S. NR 10.117 (5)

S. NR 10.28 (1)

**Ch. NR 23**

S. NR 23.02 (4m) and (10) (L)

**Public Defender:**

**Ch. PD 6**

S. PD 6.04 (5)

**Public Instruction:**

**Ch. PI 3**

S. PI 3.03 (6) (b)

**Psychology Examining Board:**

**Ch. Psy 1**

S. Psy 1.01 (entire section)

S. Psy 1.02 (5)

**Ch. Psy 2**

S. Psy 2.01 (1), (2) and (7)

S. Psy 2.02 (2)

S. Psy 2.09 (1) (a) and (j), (2), (3) (a), (b) and (c) and (4)

S. Psy 2.12 (entire section)

**Ch. Psy 3**

S. Psy 3.01 (1) and (2)

**Ch. Psy 4**

S. Psy 4.01 (entire section)

S. Psy 4.02 (2), (3) and (4)

S. Psy 4.03 (intro.) and (2)

**Ch. Psy 5**

S. Psy 5.01 (7) and (32)

S. Psy 5.02 (1) (a) and (b)

**Regulation and Licensing:**

**Ch. RL 40** (entire chapter) was renumbered to **ch. DFI-Bkg 40**.

**Ch. RL 41** (entire chapter) was renumbered to **ch. DFI-Bkg 41**.

**Ch. RL 42** (entire chapter) was renumbered to **ch. DFI-Bkg 42**.

**Ch. RL 43** (entire chapter) was renumbered to **ch. DFI-Bkg 43**.

**Revenue:**

**Ch. Tax 11**

S. Tax 11.19 (2) (d) and (f), (5) (intro.) and (b) and (6)

S. Tax 11.68 (entire section)

S. Tax 11.70 (3) (m)

**EDITORIAL CORRECTIONS**

Corrections to code sections under the authority of s. 13.93 (2m) (b), Stats., are indicated in the following listing:

**Agriculture, Trade & Consumer Protection:**

**Ch. ATCP 40**

S. ATCP 40.05 (entire section) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

**Ch. ATCP 50**

- S. ATCP 50.36 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. ATCP 50.62 (7) (e) had a correction made under s. 13.93 (2m) (b) 1., Stats.
- S. ATCP 50.80 (3) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. ATCP 92**

- S. ATCP 92.05 (2) had a correction made under s. 13.93 (2m) (b) 1., Stats.

**Ch. ATCP 122**

- S. ATCP 122.04 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. ATCP 134**

- S. ATCP 134.06 (1) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. ATCP 161**

- S. ATCP 161.23 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Commerce:****(Public Swimming Pools, Ch. Comm 90--)****Ch. Comm 90**

- S. Comm 90.10 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Corrections:****Ch. DOC 328**

- S. DOC 328.02 (entire section) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 328.03 (21) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 328.14 (11) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 328.29 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. DOC 348**

- S. DOC 348.04 (entire section) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.
- S. DOC 348.07 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. DOC 349**

- S. DOC 349.05 (3) and (4) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.

**Ch. DOC 350**

- S. DOC 350.03 (3) had corrections made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 350.04 (3) and (4) had corrections made under s. 13.93 (2m) (b) 6. and 7., Stats.
- S. DOC 350.05 (7) (b) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 350.08 (intro.) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 350.11 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.
- S. DOC 350.21 (1) and (2) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Financial Institutions--Banking:**

**Ch. DFI-Bkg 40 was renumbered from ch. RL 40 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. DFI-Bkg 42 was renumbered from ch. RL 42 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Ch. DFI-Bkg 43 was renumbered from ch. RL 43 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Health and Family Services:****(Management & Technology, etc., Chs. HFS 1--)****Ch. HFS 15**

- S. HFS 15.02 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**(Community Services, Chs. HFS 30--)**

**Ch. HFS 52 was renumbered from ch. HSS 52 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HFS 53 was renumbered from ch. HSS 53 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**Ch. HFS 54 was renumbered from ch. HSS 54 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 6. and 7., Stats.**

**(Health, Chs. HFS 110--)**

**Ch. HFS 129 was renumbered from ch. HSS 129 under s. 13.93 (2m) (b) 1., Stats., and corrections were made under s. 13.93 (2m) (b) 7., Stats.**

**Insurance, Commissioner of:****Ch. Ins 2**

- S. Ins 2.40 (4) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Natural Resources:**

*(Fish, Game, etc., Chs. NR 1--)*

**Ch. NR 10 (entire chapter) had corrections made under s. 13.93 (2m) (b) 7., Stats.**

S. NR 10.13 (1) (b) had a correction made under s. 13.93 (2m) (b) 1., Stats.

**Ch. NR 23**

S. NR 23.05 (3) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Public Instruction:**

**Ch. PI 1**

S. PI 1.01 (2) (d) had corrections made under s. 13.93 (2m) (b) 7., Stats.

**Ch. PI 2**

S. PI 2.02 (5) (a) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Ch. PI 13**

S. PI 13.02 (1) had a correction made under s. 13.93 (2m) (b) 7., Stats.

**Psychology Examining Board:**

**Ch. Psy 2**

S. Psy 2.09 (5) had a correction made under s. 13.93 (2m) (b) 7., Stats.

## ERRATA

Items reprinted to correct printing errors such as dropped copy (or other errors) are indicated in the following listing:

**Agriculture, Trade and Consumer Protection:**

**Ch. ATCP 100**

S. ATCP 100.93 reprinted to change title.

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## FINAL REGULATORY FLEXIBILITY ANALYSES

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### 1. Agriculture, Trade & Consumer Protection (CR 98–154)

ATCP Code & Ch. JUS 2 – Technical and remedial rule changes pertaining to farm mediation and arbitration, sustainable agriculture, agricultural development and diversification, commercial feed, soil and water resource management, LP gas meters, freezer meat and food service plans, referral selling plans and car rental notices.

#### Summary of Final Regulatory Flexibility Analysis:

This rule will have no effective on small business.

#### Summary of Comments:

On March 11, 1999, this department transmitted the above rule for legislative committee review. On March 16, the rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance. On March 18, the rule was referred to the Assembly Committee on Agriculture. The department received no comments or request for hearing from either committee.

### 2. Commerce (CR 98–207)

Ch. Comm 90 – Design and installation of public swimming pools.

#### Summary of Final Regulatory Flexibility Analysis:

One written comments was received; no public testimony was given on the proposed rule revision. Some items mentioned in the written comments were not addressed in this proposed rule revision because they were determined by staff to be petitionable items. Owners of existing pools and whirlpools may petition the department for continued use when equivalence may be provided.

#### Summary of Comments:

The rules were reviewed by the Assembly Committee on Tourism and Recreation and the Senate Committee on Economic Development, Housing and Government Operations. No comments were received.

### 3. Corrections (CR 98–208)

S. DOC 328.21 – Search and seizure of probation and parole offenders.

#### Summary of Final Regulatory Flexibility Analysis:

The proposed rule does not require small business to perform any duties and will have no impact on small businesses as defined in s. 227.114 (1) (a), Stats.

#### Summary of Comments:

No comments were reported.

### 4. Corrections (CR 98–193)

Ch. DOC 349 – Holding juveniles in municipal lockup facilities.

#### Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1)(a), Stats.

#### Summary of Comments:

There were no comments reported.

### 5. Financial Institutions—Banking (CR 99–12)

Chs. DFI–Bkg 41 and RL 41 – Fees and registration for mortgage bankers, loan originators and mortgage brokers.

#### Summary of Final Regulatory Flexibility Analysis:

This proposed rule is expected to impact on small businesses. The proposed rule is expected to increase existing state revenues due to an increase in fees. The following fees for all registrations and renewals of registration under subch. II, ch. 224, Stats., apply:

- Mortgage banker, \$1,000;
- Loan originator, \$250; and
- Mortgage broker, \$750.

A certificate of registration may be renewed prior to expiration by making application on Department form and paying the appropriate fee. A certificate of registration may be renewed after expiration by making application on Department form, paying the appropriate fee, and paying a late fee of \$100. A loan originator may transfer employment to another registered mortgage banker or mortgage broker by making application on Department form and paying a transfer fee of \$20.

#### Summary of Comments:

There were no comments reported.

### 6. Health & Family Services (CR 98–191)

Ch. HFS 12 – Uniform procedures for checking caregiver backgrounds.

#### Summary of Final Regulatory Flexibility Analysis:

These rules apply to the following “agencies:”

- the Department;
- county social services and human services departments that license foster homes for children or carry out adoption home studies;
- private child–placing agencies that license foster homes for children or carry out adoption home studies; and
- school boards that establish or contract for a day care program.

These rules also apply to the following licensed, certified, registered or approved "entities:"

- certified community mental health programs;
- certified community alcohol and other drug abuse (AODA) prevention and treatment programs;
- family day care centers for children;
- group day care centers for children;
- day camps for children;
- foster homes and treatment foster homes for children;
- group homes for children;
- shelter care facilities for children;
- child-caring institutions;
- child-placing agencies;
- ambulance service providers;
- adult family homes certified or licensed by the Department;
- residential care apartment complexes (formerly called assisted living facilities);
- community-based residential facilities (CBRFs);
- nursing homes and facilities for the developmentally disabled;
- hospice programs;
- home health agencies;
- rural medical centers; and
- hospitals.

Many of the entities are small businesses as "small business" is defined ins. 227.114 (1) (a), Stats. This includes about 1/3 of the community mental health and AODA programs; nearly all of the 2665 family day care centers; nearly 1/3 of the 2269 group day care centers; 12 of the 80 private child-placing agencies; most of the 2800 foster homes and 10% of 140 group homes; 25 of 450 ambulance service providers; 7 of 45 residential care apartment complexes; 600 of 1120 CBRFs; 96 of 472 nursing homes; most of the hospice programs; and 115 of 191 home health agencies.

The rules require entities to have prospective employees, contractors and nonclient residents, beginning October 1, 1998, complete a standard Background Information Form developed by the Department, to have current employees, contractors and nonclient residents fill out that form by October 1, 1999, and to have employees, contractors and nonclient residents fill out that form every 4 years after the first time. The rules also require an entity to undertake searches from several specified sources for background information about applicants for employment and any person who proposes to provide services under contract to the entity's clients. Finally, the rules prohibit an entity from hiring or contracting with a person or allowing a nonclient to reside at the entity, or retaining the person, if that person has a conviction or charge for a serious crime, has been found to have abused or neglected a client or child or misappropriated a client's property or does not have the proper professional credential. However, for specified crimes and other acts and offenses, which would otherwise bar a person from residence or employment, a person is permitted to ask an agency for a waiver of the bar based on evidence of rehabilitation.

The requirements found in the rules are either taken from the statutes that the rules are implementing, ss. 48.685 and 50.065, Stats., as created by 1997 Wisconsin Act 27 and amended by 1997 Wisconsin Act 237, or those statutes direct the Department to specify the requirements.

Both the statutes being implemented and the implementing rules are directed at helping protect vulnerable persons being cared for by others in specified state-regulated facilities and programs or by specified state-regulated agencies from being harmed.

No new professional skills are necessary for entities to comply with ch. HFS 12.

In response to comments received during public review of the proposed permanent rules, the Department, within the scope of the authority given it by statute to add crimes to the statutory list of crimes which permanently or temporarily bar persons with convictions from receiving regulatory approval or being hired or contracted with to provide care to clients or to reside at an entity with access to clients, moved a number of the listed crimes off of the Crimes List, moved several others from "permanent bar status" to "bar with rehabilitation" status and, for other crimes, placed time limits on need for a person with a conviction to demonstrate rehabilitation. This modification of the Crimes List and addition of or change in certain definitions, also in response to public hearing comments, should reduce the burden on some employers, including small business employers, in implementing the new uniform background check legislation.

#### Summary of Comments of Legislative Standing Committees:

The Assembly Committee on Health held a public hearing on the proposed rules on April 13, 1999, and the Senate Committee on Health, Utilities and Veterans and Military Affairs held a public hearing on the proposed rules on April 28, 1999. Both committees, following their hearings, requested the Department to make modifications in CR 98-191.

The Department on May 12, 1999, informed the committee chairpersons that it was making 9 germane modifications in CR 98-191. These included correcting the definition of "caregiver" to make it more limited as was done earlier in proposed ch. HFS 13; to permit rather than require an agency or entity to take into consideration all 18 criteria set out in the rules in determining if a crime is "substantially related" to the care of a client; to modify the applicability of the rules to emergency medical technicians (EMTs); and to require agencies and entities to "retain" rather than "keep on file" background information forms and other required information, so long as the documents can be promptly retrieved for inspection.

## **7. Health & Family Services (CR 98-188)**

Chs. HFS 13 & HSS 129 – Reporting and investigation of allegations of caregiver misconduct and the operation of the caregiver misconduct registry.

#### Summary of Final Regulatory Flexibility Analysis:

These rules apply to the following licensed, certified, registered or approved "entities:"

- certified community mental health programs;
- certified community alcohol and other drug abuse (AODA) prevention and treatment programs;
- ambulance service providers;
- adult family homes certified or licensed by the Department;
- residential care apartment complexes (formerly called assisted living facilities);
- community-based residential facilities (CBRFs);
- nursing homes and facilities for the developmentally disabled;
- hospice programs;
- home health agencies;
- rural medical centers; and
- hospitals.

Many of the entities are small businesses as "small business" is defined in s. 227.114 (1) (a), Stats. This includes about 1/3 of the community mental health and AODA programs; 25 of 450 ambulance service providers; 7 of 45 residential care apartment complexes; 600 of 1120 CBRFs; 96 of 472 nursing homes; most of the hospice programs; and 115 of 191 home health agencies.



The rules require an entity to report to the Department allegations of caregiver misconduct toward residents or patients. Misconduct is abuse or neglect of a client or misappropriation of the client's property. The Department has current rules in ch. HFS 129 that require this reporting by nursing homes and facilities for the developmentally disabled, hospitals, home health agencies and hospice programs. Section 146.40 (4g) and (4r), Stats., was amended by 1997 Wisconsin Act 27 to expand the reporting responsibility to the other types of care and treatment providers listed above. This order consolidates under ch. HFS 13 the required reporting of misconduct, follow-up investigation by the Department and maintenance by the Department of a registry of caregivers for whom allegations of misconduct have been substantiated.

Chapter HFS 13 will not itself have a significant economic impact on a substantial number of small businesses. Expansion of the scope of the caregiver misconduct reporting requirement from 5 service provider types to 11 service provider types is a statutory requirement.

#### Comments of Legislative Standing Committees

The Assembly Committee on Health held a public hearing on the proposed rules on April 13, 1999, and the Senate Committee on Health, Utilities and Veterans and Military Affairs held a public hearing on the proposed rules on April 28, 1999. Both committees, following their hearings, requested the Department to make modifications in [CR 98-188](#).

The Department on May 12, 1999, informed the committee chairpersons that it was making one germane modification in [CR 98-188](#). That was to have separate definitions for "abuse" and "neglect," rather than include "neglect" in the definition for "abuse," with the abuse definition amended so that it is focused on actions taken purposely with intent to harm and the neglect definition focused on actions done purposely without intent to harm.

No further comments were received from the standing committees.

### **8. Insurance (CR 99-14)**

S. Ins 2.80 – Valuation of life insurance policies model regulation.

#### Summary of Final Regulatory Flexibility Analysis:

The Office of the Commissioner of Insurance has determined that this rule will not have a significant economic impact on a substantial number of small businesses and therefore a final regulatory flexibility analysis is not required.

#### Summary of Comments of Legislative Standing Committees:

The legislative standing committee had no comments on this rule.

### **9. Natural Resources (CR 98-92)**

Ch. NR 10 – Deer management units 73C (Iowa and Grant counties) and 75 (Iowa and Lafayette counties).

#### Summary of Final Regulatory Flexibility Analysis:

The proposed rules are applicable to individual hunters and landowners; therefore, a final regulatory flexibility analysis is not required.

#### Summary of Comments by Legislative Review Committees:

The proposed rules were reviewed by the Assembly committee on natural Resources and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. On February 17, 1999, the Assembly Committee on Natural Resources extended the review period for 30 days. No public hearing was scheduled during that time.

### **10. Psychology Examining Board (CR 98-206)**

Chs. Psy 1 through 5 – Requirements for examination and licensure of psychologists, renewal and conduct.

#### Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

#### Summary of Comments:

No comments were reported.

### **11. Public Defender (CR 99-33)**

S. PD 6.04 (5) – Multiple appointments on the same case.

#### Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

#### Summary of Comments:

No comments were reported.

### **12. Public Instruction (CR 98-164)**

S. PI 3.03 – Alternative teacher permits.

#### Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1)(a), Stats.

#### Summary of Comments:

No comments were reported.

### **13. Revenue (CR 98-171)**

S. Tax 11.68 – Construction contractors.

#### Summary of Final Regulatory Flexibility Analysis:

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments:

No comments were reported.

### **14. Revenue (CR 98-144)**

S. Tax 11.70 – Printed material exemptions and the sales and use tax treatment of advertising agencies.

#### Summary of Final Regulatory Flexibility Analysis:

This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

#### Summary of Comments:

No comments were reported.

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## *EXECUTIVE ORDERS*

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*The following is a listing of recent Executive Orders issued by the Governor.*

**Executive Order 370.** Relating to the Appointment of a Hearing Officer.

**Executive Order 371.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on Memorial Day.

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# *PUBLIC NOTICES*

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## **Public Notice** *Health and Family Services* *(Medical Assistance Reimbursement of Hospitals)*

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. The State's Department of Health and Family Services administers this program which is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, which provide the methods and standards for paying for hospital outpatient and inpatient services.

### **Summary**

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make several changes in these plans effective **July 1, 1999**. Many of these changes are included in the proposed 1999–2001 state budget. Upon enactment of the 1999–2001 state budget, certain of these proposed changes will be modified if necessary to effectuate the mandates included in the budget act.

### **Outpatient Hospital Services**

Proposed changes in the state plan for reimbursement for outpatient hospital services may include:

1. Adjustment of the percentages by which base year outpatient costs are increased for the July 1999 through June 2001 biennium to implement the payment adjustments included in the 1999–2001 budget act.
2. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds. The amount paid for this adjustment would not change. However, this modification would cause a redistribution of the funds among qualifying hospitals.
3. Modification of supplemental payments to essential access city hospitals (EACH) to maintain compliance with federal payment limits. This modification would not change the total amount paid. It would, however, adjust the amount paid through outpatient payments versus inpatient payments.
4. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of 1999–2001 budget act and to maintain compliance with federal payment limits.
5. Criteria for funding of critical access hospitals to implement a provision the 1999–2001 budget act. Qualifying criteria include designation by Medicare and Wisconsin Medicaid as a critical access hospital. Establish a methodology to allow qualifying hospitals to receive reasonable cost reimbursement. Payments for this adjustment would maintain compliance with federal payment limits.
6. Establishment of qualifying criteria and a distribution methodology for a supplemental payment to certain hospitals to implement a provision of the 1999–2001 budget act.

### **Inpatient Hospital Services**

Proposed changes in the state plan for reimbursement for inpatient hospital services may include:

1. For the payment system which is based on diagnosis–related groups (DRG's), adjustment of DRG weighting factors, standard DRG base rates, area wage indices, and capital and medical education payments to implement the overall rate adjustment provided by the 1999–2001 budget act.

2. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds. The total amount paid for this adjustment would not change. However, this modification would cause a redistribution of the funds among qualifying hospitals.
  3. Updating of the disproportionate share adjustment parameters to recognize a more current proportion of services provided by hospitals to Medicaid recipients.
  4. Revision of the indirect medical education adjustment percentage to meet the requirements of the 1999–2001 budget act relating to hospitals located in Wisconsin. The formula used to calculate the indirect medical education percentage includes a multiplier factor that when revised affects the amount of funds distributed to qualifying hospitals.
  5. Modification of the direct medical education payment and the indirect medical education adjustment in order to meet the requirements of the 1999–2001 budget act relating to hospitals not located in Wisconsin.
  6. Modification of supplemental payments to essential access city hospitals (EACH) to maintain compliance with federal payment limits. This modification would not change the total amount paid. It would, however, adjust the amount paid through inpatient versus outpatient.
  7. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of the 1999–2001 budget act and to maintain compliance with federal payment limits.
  8. For the general assistance disproportionate share supplement, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for the supplement, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of the 1999–2001 budget act and to maintain compliance with federal payment limits.
  9. Criteria for funding of critical access hospitals to implement a provision of the 1999–2001 budget act. Qualifying criteria include designation by Medicare and Wisconsin Medicaid as a critical access hospital. Establish a methodology to allow qualifying hospitals to receive reasonable cost reimbursement. Payments for this adjustment would maintain compliance with federal payment limits.
- Implementation of the above changes to the State Plans for inpatient hospital services and outpatient hospital services is expected to increase annual expenditures of the Wisconsin Medical Assistance Program by \$7.1 million all–funds for state fiscal year 1999–2000. This amount is the combination of \$9.8 million all–funds of expected increases and \$2.7 million all–funds of expected decreases.

### **Copies of Proposed Changes and Proposed Payment Rates**

Copies of the proposed changes will be sent to the main office of every county social service or human service department where they will be available for public review. For more information, interested persons may fax or write to:

Hospitals, Physicians and Clinics Unit  
Division of Health Care Financing  
Department of Health and Family Services  
P. O. Box 309  
Madison, WI 53701–0309

FAX (608) 266–1096

### **Written Comments**

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Division of Health Care Financing  
Room 350, State Office Building  
One West Wilson Street  
Madison, WI

## **Public Notice**

### ***Health and Family Services***

#### ***(Medical Assistance Reimbursement for Non–Institutional Providers of Services: State of Wisconsin Medicaid Payment Plan for FY 1999–2000 and 2000–2001)***

The State of Wisconsin reimburses providers for non–institutional services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.497, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid.

#### **Summary**

Under current law, non–institutional MA providers, including physicians, dentists and home health agencies, are paid the lesser of: (a) their usual and customary charges; or (b) maximum fees established by the Department for each procedure. The Department modifies the maximum fee schedules to implement MA rate changes authorized by the Legislature.

The Wisconsin Legislature is in the process of completing work on the 1999–2001 State Budget. The new State Budget is expected to increase rates for non–institutional providers. The following MA benefits and services were included in calculation of the rate increase:

- (a) ambulance transportation;
- (b) certified nurse anesthetist;
- (c) chiropractic;
- (d) dental;
- (e) durable medical equipment and disposable medical supplies;
- (f) end–stage renal disease;
- (g) family planning;
- (h) federally qualified health centers (FQHCs);
- (i) HealthCheck;
- (j) hearing aids;
- (k) home health;
- (l) hospice;
- (m) lab and x–ray;
- (n) outpatient hospital psychology and mental health;
- (o) personal care;
- (p) physicians and clinics;
- (q) podiatrists;
- (r) prenatal care coordination;
- (s) rural health clinic;
- (t) transportation by specialized medical vehicle;
- (u) therapies; and
- (v) vision care.

Dental services were later the subject of separate legislative action and are not part of the action described in this notice.

Pending final legislative action, the Department is proposing an increase in the rates for reimbursement for these non-institutional providers of services under the MA program. The amount of the increase will be 1% in state fiscal year (SFY) 2000–2001. No increase is proposed for SFY 1999–2000. The Department’s proposal involves no change in the definition of the already existing group and the benefits remain the same.

It is estimated that this change will increase annual aggregate Medicaid expenditures by \$3,585,100 all funds in state fiscal year (SFY) 2001 (\$2,131,300 federal and \$1,453,800 state GPR). No change is projected for SFY 2000.

### ***Proposed Change***

The proposed change is to: Modify the rate for reimbursement for these non-institutional providers of services under the MA program by an increase of 1% beginning July 1, 2000. No rate increase is provided for non-institutional providers in state fiscal year (SFY) 1999–2000.

### ***Copies of the Proposed Change***

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail  
Bureau of Health Care Financing  
P.O. Box 309  
Madison, WI 53701–0309

Phone  
Mary Laughlin, Budget Unit Chief  
Telephone (608) 261–7833

FAX  
(608) 266–1096  
Attention: Mary Laughlin

E-Mail  
[matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us)

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

### ***Written Comments***

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266–1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

**Public Notice**  
*Health and Family Services*

*(Medical Assistance Reimbursement for Dental Services:  
State of Wisconsin Medicaid Payment Plan for FY 1999–2000 and 2000–2001)*

The State of Wisconsin reimburses providers for dental services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.497, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid.

**Summary**

Wisconsin's MA program covers basic dental services within the following categories of service:

- (a) diagnostic;
- (b) preventive;
- (c) restorative;
- (d) endodontics;
- (e) periodontics;
- (f) fixed and removable prosthodontics;
- (g) oral and maxillofacial surgery;
- (h) orthodontics; and
- (i) adjunctive general services.

Limitations apply to the frequency and type of covered dental services. MA payment for dental services is the lesser of the provider's usual and customary charges or amounts prescribed under a fee schedule established by the Department.

The Wisconsin Legislature is in the process of completing work on the 1999–2001 State Budget. The new State Budget is expected to increase rates for providers of dental services to MA recipients. Pending final legislative action, the Department is proposing to increase rates for reimbursement of these providers. The Department is proposing to modify the fee-for-service rate for reimbursement for dental services under the MA program for adults to 65% of calendar year 1998 usual and customary charges and for children to 69% of calendar year 1998 usual and customary charges. The Department's proposal involves no change in the definition of the already existing group and the benefits remain the same. The Department expects these changes to become effective **July 1, 1999**.

It is estimated that this change will increase annual aggregate Medicaid expenditures by \$2,998,300 all funds in state fiscal year (SFY) 2000 (\$1,762,900 federal and \$1,235,400 state GPR). In state fiscal year (SFY) 2001 the increase is estimated to be \$5,293,100, all funds (\$3,133,500 federal and \$2,159,600 state GPR).

**Proposed Change**

The proposed change is to: Modify the fee-for-service rate for reimbursement for dental services under the MA program for adults to 65% of calendar year 1998 usual and customary charges and for children to 69% of calendar year 1998 usual and customary charges.

## ***Copies of the Proposed Change***

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail  
Bureau of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

Phone  
Mary Laughlin, Budget Unit Chief  
Telephone (608) 261-7833

FAX  
(608) 266-1096  
Attention: Mary Laughlin

E-Mail  
[matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us)

A copy of the proposed change is also available for review at the main office of any county department of social services or human services.

## ***Written Comments***

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

## **Public Notice** ***Health and Family Services***

### ***(Medical Assistance Reimbursement for Personal Care Services: State of Wisconsin Medicaid Payment Plan for FY 1999-2000 and 2000-2001)***

The State of Wisconsin reimburses providers for personal care services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and ss. 49.43 to 49.497, Wisconsin Statutes. This program, administered by the State's Department of Health and Family Services (DHFS), is called Medical Assistance (MA) or Medicaid.

## ***Summary***

The Wisconsin Legislature is in the process of completing work on the 1999-2001 State Budget. The new State Budget is expected to increase rates for personal care services. Under the budget bill, reimbursement rates for personal care services would be increased effective **July 1, 1999**, and again in 2000-2001. Under the MA program, personal care services are coordinated by licensed home health agencies, independent living centers and designated county human service agencies. Personal care workers are required



to have 40 hours of training and to work under the supervision of a registered nurse. The current hourly reimbursement rate for personal care services is \$11.50 per hour. Under the rate increase provided in the bill, the rate would be increased by 50¢ per hour beginning **July 1, 1999**. Beginning July 1, 2000, personal care providers would receive an additional 1% increase provided to all non-institutional providers under the proposed budget bill. The Department's action is subject to further change, pending final legislative action. The Department's proposal involves no change in the definition of the already existing group and the benefits remain the same.

It is estimated that this change will increase annual aggregate Medicaid expenditures by \$3,268,000 all funds in state fiscal year 2000 (\$1,921,500 federal and \$1,346,500 state GPR). In state fiscal year (SFY) 2001 the increase is estimated to be \$3,803,900 all funds (\$2,251,900 federal and \$1,552,000 state GPR).

### ***Proposed Change***

The proposed change is to: Increase the rate for personal care services by 50¢ per hour beginning July 1, 1999 and to further modify the rate for reimbursement for personal care services under the MA program by an increase of 1% beginning July 1, 2000.

### ***Copies of the Proposed Change***

A copy of the proposed change may be obtained free of charge by calling or writing as follows:

Regular Mail  
Bureau of Health Care Financing  
P.O. Box 309  
Madison, WI 53701-0309

Phone  
Mary Laughlin, Budget Unit Chief  
Telephone (608) 261-7833

FAX  
(608) 266-1096  
Attention: Mary Laughlin

E-Mail  
[matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us)

A copy of the proposed change is also available for review at the main office of any county department of social services or human services.

### ***Written Comments***

Written comments are welcome. Written comments on the proposed change may be sent by FAX, e-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 266-1096. The e-mail address is [matana@dhfs.state.wi.us](mailto:matana@dhfs.state.wi.us). Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

**Public Notice**  
*Health and Family Services*

*(Medical Assistance Reimbursement of Nursing Homes:  
State of Wisconsin Medicaid Nursing Facility Payment Plan for FY 1999–2000)*

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.497, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect, as approved by the federal Health Care Financing Administration (HCFA).

### **Summary**

The Wisconsin Legislature is in the process of completing work on the 1999–2001 State Budget. The new State Budget is expected to increase nursing home rates. Pending final legislative action, the Department is proposing changes in the methods of payment to nursing homes and, therefore, in the plan describing the nursing home reimbursement system. The changes are effective **July 1, 1999**.

The proposed changes would update the payment system. This notice describes changes which are necessary to implement policies contained in the Wisconsin 1999–2001 Biennial Budget, which has not yet been adopted by the Legislature and signed into law by the Governor. Therefore, this notice describes actions which may change further pending final legislative action.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA recipients is approximately \$34,800,000, all funds including patient liability, (\$29,800,000 federal and \$5,000,000 state GPR).

The proposed changes will implement expected changes in Wisconsin Statutes governing Medicaid payment systems, in particular affecting s. 49.45 (6m), Wis. Stats.

### **Proposed Changes**

The proposed changes are the following:

1. Modify the methodology to adjust the reimbursement for nursing homes within the parameters of the 1999–2001 Biennial Budget Bill, and to disburse the \$34,800,000 allotted in the bill to pay for a 3.5% rate increase. These modifications will include adjustments to the medians used to calculate maximums and per diem increases in Sections 5.400, 5.500 and 5.600 of the state plan, changes in the occupancy percentage used to establish the minimum occupancy standard in Section 3.030, the inflation and deflation factors in Section 5.300, and targets in Sections 3.000 and 5.000. The over–the–counter drug parameter in Section 5.900 will be updated. The parameters for calculating the capital payment will be updated and moved from Section 3.530 to Section 5.000.
2. Payments for the 1999–2000 rate year will come from the 1998 cost reports.
3. Effective October 1, 1998, \$8,309,000 all funds (\$3,423,500 GPR) will be used to fund a 5% wage pass–through supplement for certified nurse assistants. The Department will monitor this supplement and recoup payments when facilities do not pass this supplement along to the certified nurse assistants.

### **Copies of the Proposed Changes**

Copies of the available proposed changes and proposed rates may be obtained free of charge by writing to:

Division of Health Care Financing  
Attention: Nursing Home Medicaid Payment Plan  
P. O. Box 309  
Madison, WI 53701–0309

or by faxing James Cobb at (608) 264–7720

The available proposed changes may be reviewed at the main office of any county Department of Social Services or Human Services.

### ***Written Comments/Meetings***

Written comments on the proposed changes may be sent to the Division of Health Care Financing at the above address. The comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes based on comments received.

There will also be public meetings to seek input on the proposed plan amendments. If you would like to be sent a public meeting notice, please write to the above address. Revisions may be made in the proposed changes based on comments received at these forums.

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